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TUESDAY, JANUARY 12, 1999 9:40 A.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN THE COURTROOM, IN THE PRESENCE OF THE JURY)

THE COURT: WE'RE ON THE RECORD. I WANT TO TAKE A MINUTE OUT TO TALK YOU, JURORS, ABOUT THE IMPORTANCE OF BEING PROMPT, BECAUSE THIS IS REALLY ABOUT THE THIRD DAY THAT SOME JUROR OR THE OTHER HAS BEEN LATE. I WAS ON THE BENCH AT 9:30. EVERYBODY ELSE WAS HERE THAT NEEDED TO BE HERE. I DON'T KNOW THE CIRCUMSTANCES THAT CAUSED TODAY'S DELAY, BUT WE CANNOT DO THIS EVERY DAY.

I CANNOT RUN THIS TRIAL AND DO IT EFFICIENTLY AND GET IT DONE WITHIN THE TIME ESTIMATE I GAVE YOU IF EVERY DAY WE'RE STARTING 10, 15 MINUTES, A HALF HOUR LATE. WE'VE GOT TO BE HERE ON TIME.

AND I'M NOT DOING THIS TO BE HEAVY HANDED OR ARROGANT OR TO USE THE POWERS OF THIS OFFICE. I'M DOING IT IN ORDER TO RUN AN EFFICIENT AND EFFECTIVE TRIAL AND BE FAIR TO ALL OF YOU WHO ARE HERE ON TIME.

WE'VE JUST GOT TO ARRANGE OUR AFFAIRS SO WE BUILD IN ENOUGH EXTRA TIME THAT IF A BUS IS A LITTLE LATE OR SOMETHING ELSE HAPPENS, THAT WE'RE ON TIME. IT JUST ISN'T FAIR TO THOSE OF YOU WHO ARE HERE. I DON'T WANT TO COME DOWN ON YOU, BECAUSE YOU ARE PERFORMING A MAGNIFICENT AND IMPORTANT SERVICE. WE ALL RECOGNIZE THAT. BUT IT IS AN IMPORTANT PART OF THAT PUBLIC SERVICE THAT WE'RE HERE AT THE APPOINTED HOUR. BECAUSE OTHERWISE, YOU'RE JUST GOING TO CREATE A LOT OF RESENTMENT BETWEEN YOURSELVES IF PEOPLE ARE CONSTANTLY COMING IN LATE. YOU ARE GOING TO, IN THE LONG

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RUN, BE GETTING RESENTFUL INSTEAD OF ENJOYING THE EXPERIENCE MORE.

PLEASE, THE BOTTOM LINE IS, LET'S BE HERE AT THE APPOINTED HOUR. WE NEED TO DO THAT OUT OF RESPECT FOR ONE ANOTHER. AND AS I INDICATED TO YOU AT THE BEGINNING, THE ONLY REASON I'M HARPING ON THIS IS BECAUSE WHEN I SAY LESS ABOUT THIS, IT DOESN'T SEEM TO BE VERY EFFECTIVE.

IF ONE OF YOU IS 10 MINUTES LATE AND YOU MULTIPLY THAT TIMES THE NUMBER OF PEOPLE THAT ARE HERE ON TIME, WE'VE WASTED HOURS OF PEOPLE'S TIME. I MEAN, IT ISN'T THE RIGHT THING TO DO.

ALL RIGHT. NOW, HOPEFULLY I WON'T HAVE TO DO THIS AGAIN. I DON'T ENJOY TALKING TO THIS WAY TO JURORS, BECAUSE AS I SAY, WE'RE ALL SO APPRECIATIVE OF WHAT YOU ARE DOING. SO PLEASE, LET'S PUT THIS KIND OF STUFF BEHIND US SO WE CAN HAVE AN EFFICIENT TRIAL.

OKAY. ALL RIGHT. MS. CHABER, YOU HAVE DR. POLLAY BACK WITH YOU TODAY.

MS. CHABER: YES, I DO.

THE COURT: WHY DON'T WE HAVE HIM RESUME THE STAND.

TESTIMONY OF

RICHARD WARREN POLLAY,

A WITNESS CALLED ON BEHALF OF THE PLAINTIFF, HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED FURTHER AS FOLLOWS:

CONTINUED DIRECT EXAMINATION

BY MS. CHABER: Q. GOOD MORNING, DR. POLLAY.

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A. GOOD MORNING.

Q. YESTERDAY, WE WERE TALKING ABOUT HILL AND

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KNOWLTON AND THEIR ROLE IN WORKING FOR AND AT THE REQUEST OF THE TOBACCO INDUSTRY.

THE FILES THAT YOU FOUND, CAN YOU TELL US WHAT MEASURE OF SECURITY THERE WAS FOR THE INTEGRITY OF THESE FILES FROM THE TIME THEY WERE WRITTEN UNTIL WHEN YOU SAW THEM?

MR. OHLEMEYER: EXCUSE ME, YOUR HONOR. I DON'T KNOW THAT THIS WITNESS CAN ANSWER THAT QUESTION.

THE COURT: IS YOUR OBJECTION THAT IT LACKS FOUNDATION?

MR. OHLEMEYER: YES. I'M SORRY.

THE COURT: SUSTAINED.

MS. CHABER: Q. ARE YOU AWARE OF WHAT WAS THE BACKGROUND OF THE UNIVERSITY OF WISCONSIN AT MADISON GETTING THESE FILES?

A. YES. THEY WERE DONATED BY MR. HILL AND HIS WIDOW. THAT'S CORRECT.

Q. AND THE FILES, DID THE UNIVERSITY OF WISCONSIN HAVE THEM FROM THAT POINT ON?

A. THE BULK OF THE MATERIALS WERE DONATED IN 1964 AND WERE PUT UNDER LOCK AND KEY FOR 25 YEARS.

Q. AND AT THE TIME THAT YOU SAW THEM, HAD THEY BEEN UNDER LOCK AND KEY FOR LAST 25 YEARS?

A. YES, THEY HAD.

Q. AND YOU WERE THE FIRST TO SEE THEM AND REVIEW AT LEAST THE CIGARETTE INFORMATION PORTIONS OF THEM?

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A. THAT'S MY UNDERSTANDING, YES.

Q. AND THE PORTIONS THAT RELATED TO HILL AND KNOWLTON'S WORK TO THE CIGARETTE INDUSTRY, HOW WOULD YOU GO ABOUT ACTUALLY DOING THE RESEARCH AND SEEING THE DOCUMENTS?

A. THERE WAS AN INVENTORY OF SORTS, NOT ITEMIZING EACH INDIVIDUAL DOCUMENT BUT IDENTIFYING VARIOUS BOXES AND WHAT CLIENTS HAD FILES WITHIN THOSE BOXES. ONE COULD THEN REQUEST THOSE BOXES TO BE RETRIEVED FROM THE LOCKED VAULT STORAGE. A MEMBER OF THE ARCHIVAL STAFF WOULD FETCH THOSE FOR YOU, A USER LIKE MYSELF, BRING THOSE MATERIALS UP. AND WITHIN THE BOX THERE WOULD BE A SERIES OF FILES AND ONE OF THEM, CONSISTENT WITH THE ITEMIZATION, WOULD BE FOR TIRC, TOBACCO INDUSTRY RESEARCH COMMITTEE.

Q. TO YOUR KNOWLEDGE, DID YOU REVIEW ALL OF THE FILES THAT RELATED TO TIRC?

A. YES, I DID. THERE WAS A SMALL SUPPLEMENT THAT THE WIDOW PROVIDED AFTER THE TIME THAT I VISITED, BUT A VERY SMALL SUPPLEMENT. I REVIEWED EVERYTHING THAT I COULD ACQUIRE AT THAT TIME.

Q. AND THE MATERIALS THAT ARE CONTAINED IN PLAINTIFF'S EXHIBIT 12, ARE THESE ALL MATERIALS THAT YOU REVIEWED AT THE UNIVERSITY OF WISCONSIN AT THE LIBRARY?

A. YES, I BELIEVE THEY ARE.

Q. AND IF YOU TURN TO DOCUMENT NO. 1 WITHIN THAT. SO THAT WOULD BE 12-1.

A. I'LL NEED THE BINDER. IT'S NO LONGER HERE.

Q. IS THAT A DOCUMENT THAT WAS CONTAINED WITHIN THE HILL AND KNOWLTON FILES AT THE UNIVERSITY OF WISCONSIN?

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A. YES, IT IS, AND IT BEARS THEIR STAMP.

Q. THE STAMP IS OF WHAT?

A. THE STATE HISTORICAL SOCIETY, WHICH IS THE OFFICIAL NAME OF THE ARCHIVES. PHYSICALLY, THEY'RE LOCATED ON THE CAMPUS, BUT IN FACT THE ORGANIZATION IS THE STATE

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HISTORICAL SOCIETY.
Q. OKAY. AND THERE ARE SOME STAMPS IN THE LOWER RIGHT-HAND CORNER WITH INITIALS AND NUMBERS. DO YOU SEE THAT "JH" AND THEN SOME NUMBERS FOLLOWING THEM?
A. YES.
Q. AND THOSE ARE ON EACH PAGE?
A. YES.
Q. AND WERE THOSE NUMBERS THAT WERE PLACED THERE AT THE HISTORICAL SOCIETY, TO YOUR KNOWLEDGE?
A. THAT I'M NOT SURE. THEY WEREN'T THERE AT THE TIME THAT I REVIEWED THE DOCUMENTS.
Q. OKAY. NOW, THIS DOCUMENT NO. 1, CAN YOU ASCERTAIN FROM THIS DOCUMENT AND ALL OF THE OTHER DOCUMENTS THAT YOU REVIEWED FROM THE HILL AND KNOWLTON FILES REGARDING TIRC WHETHER THIS DOCUMENT IS A DOCUMENT THAT IS WRITTEN BY SOMEONE WORKING AT HILL AND KNOWLTON?
A. YES. IT'S DEFINITELY FROM WITHIN HILL AND KNOWLTON AS OPPOSED TO BEING FROM THE INDUSTRY SIDE OF THE AGENCY- CLIENT RELATIONSHIP.
Q. AND HOW DO YOU KNOW THAT?
A. BY THE LANGUAGE OF THE MATERIAL. THE REFERENCES, THE KIND OF "US-THEM" REFERENCES, THE TALKING ABOUT THE INDUSTRY PEOPLE AS "THEM."

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Q. AND ARE THERE REFERENCES TO DISCUSSIONS BETWEEN HILL AND KNOWLTON AND THE THEM, THE INDUSTRY?
A. YES, THERE ARE.
Q. AND WERE THERE FOLDERS WHEN YOU REVIEWED IT ATTACHED THAT REFLECTED WHAT THESE DISCUSSIONS WERE?
A. THERE WERE SOME FILES -- I DON'T REMEMBER PHYSICALLY IF THEY WERE FOLDERS -- BUT THERE WERE SOME SUPPLEMENTAL MATERIALS CONSISTENT WITH THIS.
Q. AND WERE THE FILES, THE SUPPLEMENTAL MATERIAL CONSISTENT WITH WHAT IS STATED IN THE DOCUMENT TO BE WITHIN THOSE FILES?
A. YES.
Q. THERE ARE DISCUSSIONS CONTAINED WITHIN THAT DOCUMENT THAT TALK ABOUT A CONCERN --
MR. OHLEMEYER: EXCUSE ME, YOUR HONOR.
MS. CHABER: Q. -- OF THE INDUSTRY?
MR. OHLEMEYER: I OBJECT TO THE QUESTION AS REPEATING HEARSAY.
THE COURT: SUSTAINED. IT'S NOT IN EVIDENCE SO THE SUBSTANCE CAN'T BE REFERENCED. SUSTAINED.
MS. CHABER: Q. IS THIS DOCUMENT CONSISTENT WITH THE CHARGE THAT THE TOBACCO COMPANIES GAVE TO HILL AND KNOWLTON WITH RESPECT TO THE TOBACCO INDUSTRY RESEARCH COMMITTEE?
A. YES, IT IS, AND IT'S THE BEGINNING OF THEIR DISCHARGING OF THAT RESPONSIBILITY.
Q. AND IS IT CONSISTENT IN TERMS OF ALL OF THE OTHER DOCUMENTS YOU REVIEWED WITH WHAT THE ACTIONS WERE TAKEN BY

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HILL AND KNOWLTON ON BEHALF OF THE TOBACCO INDUSTRY?
A. YES, IT IS.
Q. AND THE THINGS SET FORTH IN DOCUMENT NO. 1, ARE THOSE THINGS FOR WHICH THERE IS SUBSEQUENT EVIDENCE THAT THESE THINGS WERE CARRIED OUT?
A. YES.
Q. AND IN THIS DOCUMENT, ARE THERE REFERENCES TO PEOPLE THAT YOU KNOW WERE INVOLVED IN THE TOBACCO INDUSTRY

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RESEARCH COMMITTEE'S WRITING OF MATERIALS FOR DISSEMINATION TO THE PUBLIC?

A. YES.

Q. AND WHO WOULD THAT BE?

A. WELL, THERE'S REFERENCES TO RESEARCH DIRECTORS OF THE PARTICIPATING TOBACCO FIRMS.

Q. AND WERE THERE IN FACT RESEARCH DIRECTORS OF THE PARTICIPATING TOBACCO FIRMS INVOLVED WITH THE TOBACCO INDUSTRY RESEARCH COMMITTEE'S WORK?

A. YES. INITIALLY, THROUGH THE RESULT OF PERSONAL INTERVIEWS AND THEN SUBSEQUENTLY THEY FORMED A GROUP CALLED THE INDUSTRY TECHNICAL COMMITTEE.

Q. AND WHO WAS ON THAT TECHNICAL COMMITTEE?

A. I DON'T RECALL THE NAMES. I'M SURE THEY APPEAR SOMEPLACE IN THESE DOCUMENTS.

Q. DO YOU RECALL THE COMPANIES?

A. IT WOULD BE ALL THE COMPANIES EXCEPT LIGGETT & MYERS. LIGGETT & MYERS WAS NOT AT THAT TIME PARTICIPATING.

Q. OKAY. AND IS THERE ANYONE ELSE THAT -- ARE THERE ANY OTHER PEOPLE REFERENCED IN THIS DOCUMENT THAT YOU KNOW

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TO BE PEOPLE WHO WERE INVOLVED WITH AND DID WORK ON BEHALF OF THE TOBACCO INDUSTRY IN THIS TOBACCO INDUSTRY RESEARCH COMMITTEE?

A. YES. THERE'S REFERENCES TO OTHER HILL AND KNOWLTON STAFF, LIKE BERT GOSS. HE'S MENTIONED BY NAME IN HERE UNDER THE SECTION OF "THINGS TO DO."

Q. AND WHO IS GRANT CLARK?

A. GRANT CLARK, HE WAS AN ADVERTISING MAN EMPLOYED BY THE S.D. ADVERTISING AGENCY. WHOSE MAJOR CLIENT WAS R.J. REYNOLDS. HE HAD WORKED FOR THE CAMEL CAMPAIGN, SERVING AS A LIAISON TO THE MEDICAL COMMUNITY, SENDING DIRECT MAIL MATERIALS TO THE MEDICAL COMMUNITY, APPEARING AT MEDICAL CONVENTIONS, PROVIDING SAMPLES TO DOCTORS AT THOSE CONVENTIONS.

Q. SAMPLES OF WHAT?

A. SAMPLES OF CIGARETTES TO THE DOCTORS. AND OTHERWISE STAYING IN CONTACT WITH THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION AND THE MEDICAL PROFESSION.

Q. NOW, WAS HE A MEDICAL DOCTOR?

A. NO. HE WAS AN ADVERTISING EXECUTIVE, AS I SAY, WITH THE S.D. ADVERTISING AGENCY.

Q. DID HE HAVE A SCIENTIFIC BACKGROUND?

A. NOT TO MY KNOWLEDGE.

Q. DID HE WRITE ANY OF THE PURPORTED SCIENTIFIC MATERIALS RELEASED BY THE TOBACCO INDUSTRY RESEARCH COMMITTEE?

A. I BELIEVE MATERIAL CAME FROM HIS OFFICE AND MATERIAL THAT PAUL HAHN'S OFFICE OF AMERICAN TOBACCO HAD

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PROVIDED WERE THE FOUNDATION ON WHICH THE SCIENTIFIC PERSPECTIVE FOR THE WHITE PAPER WAS DEVELOPED. THAT WAS THE STARTING POINT FOR THAT.

Q. AND THAT WAS SOMETHING THAT WE WERE TALKING A LITTLE BIT ABOUT YESTERDAY. AND JUST TO REFRESH THE RECOLLECTION, WHAT WAS THE TITLE OF THAT DOCUMENT?

A. "A SCIENTIFIC PERSPECTIVE ON THE CIGARETTE CONTROVERSY."

MS. CHABER: THAT DOCUMENT HAS ALREADY BEEN PREVIOUSLY MARKED, YOUR HONOR, AS 22-1, BUT RATHER THAN HAVE TO GET EVERYBODY A NEW BINDER, I HAVE ADDITIONAL COPIES.

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THE COURT: DO YOU WANT TO HAVE IT MARKED SEPARATELY? DO YOU WANT TO HAVE THAT MARKED SEPARATELY?
MS. CHABER: IT'S NOT NECESSARY. I JUST THOUGHT IT MIGHT BE AN EASIER WAY TO DO IT THAN TO HAVE EVERYBODY PULL OUT ANOTHER BINDER.
THE COURT: I'M JUST ASKING. WHATEVER YOU DO WANT TO DO IS FINE.
MS. CHABER: IF WE JUST REFER TO THE SAME NUMBER THAT'S ALREADY PREMARKED, IT WILL BE SUFFICIENT.
THE COURT: THAT'S FINE.
THE COURT: WHAT'S THE NUMBER?
MS. CHABER: IT'S 22-1. AND I'M PASSING YOU UP ANOTHER COPY, YOUR HONOR, IF YOU'D LIKE.
THE COURT: DO I HAVE BINDER 22?
MS. CHABER: NO. THAT WAS MY POINT. IT WAS THAT IF YOU DIDN'T WANT A SECOND -- YOU SHOULD HAVE THE BINDER.

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THE COURT: I DON'T HAVE THE BINDER.
MS. CHABER: YOU DON'T HAVE ALL THE BINDERS?
THE COURT: IS THERE A BINDER NO. 22?
MS. CHABER: THERE ISN'T A BINDER NO. 22.
THE COURT: YOU SAY THERE IS OR THERE ISN'T? I DON'T HAVE A BINDER 22 THAT I CAN SEE.
MS. CHABER: OH. APPARENTLY IT'S JUST THE ONE DOCUMENT, SO I GUESS I DO NEED IT MARKED. I THOUGHT THERE WAS A WHOLE NEW BINDER.
THE COURT: DO YOU WANT TO JUST HAVE THIS MARKED AS PLAINTIFF'S 22 FOR IDENTIFICATION?
MS. CHABER: YES, ASSUMING THAT'S THE NEXT NUMBER.
THE COURT: OH.
MS. WHITE: NO, 31.
MS. CHABER: IT'S NOT.
THE COURT: IS THERE A 22?
MS. WHITE: I BELIEVE WE STARTED --
THE COURT: TATSUO, DO YOU KNOW -- THIS WOULD BE UNFAIR TO YOU ON YOUR FIRST DAY BACK. DO YOU KNOW WHETHER THERE IS ANYTHING MARKED?
THE CLERK: I HAVEN'T SEEN THE EXHIBIT 22. THERE IS NO BINDER.
MS. CHABER: NO, THERE IS BINDER. IS THERE ANY 22 OF ANY KIND?
THE COURT: THAT'S ANOTHER QUESTION. IS THERE A 21 OR A 22?
MS. CHABER: I BELIEVE THERE ARE. WELL, I THINK

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THE EASIEST WAY TO DEAL WITH THIS IS WORRY ABOUT THAT LATER AND LET'S MARK THIS WHATEVER PLAINTIFF'S NEXT IN ORDER IS.
THE COURT: DO YOU WANT TO MARK THIS AS 29 THEN? IS THAT IT?
MS. CHABER: YES.
THE COURT: IS 29 THE NEXT NUMBER?
THE CLERK: YES.
THE COURT: LET'S MARK THIS AS 29 FOR IDENTIFICATION.
THE CLERK: YES.
(DOCUMENT MORE PART --
THE COURT: FOR THE YEAR?
MS. CHABER: I WAS MAKING REFERENCE TO THAT TIME PERIOD.

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THE COURT: OKAY.
THE WITNESS: I CAN'T ANSWER THE QUESTION. I DON'T KNOW THE BREAKDOWN OF THE 1962 BUDGET.
MS. CHABER: Q. IN PARAGRAPH 3, IS THERE REFERENCE TO HOW MUCH MONEY WAS ALLOCATED WITH RESPECT TO BIOLOGICAL AND CHEMICAL RESEARCH?
A. YES, THERE IS. IT'S REFERENCE TO A SMALL AMOUNT OF MONEY.
Q. 'AND THAT INCLUDED AS WELL UNLOCKING THE DOOR TO PROBLEMS FACING THE HEALTH AREA'?
A. YES.
Q. AND EXHIBIT 12-32 IS A REFERENCE TO A MAY 23RD, 1955 EDWARD R. MORROW PROGRAM ON SMOKING AND CANCER?
A. YES.
Q. HOW DOES THIS DOCUMENT RELATE TO THE WORK OF THE TIRC AND HILL AND KNOWLTON?
A. IT SHOWS THE INTERNAL PROCESSES BY WHICH THEY WERE ABLE TO HAVE INFLUENCE ON THE CHARACTER OF THE COVERAGE IN THE PROGRAMS LIKE THIS.
Q. AND DID DR. LITTLE IN PUBLIC STATEMENTS AND PRESS RELEASES ESPOUSE A CERTAIN THEORY OF CANCER CAUSATION?
A. YES, HE DID.

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Q. AND WHAT WAS THAT THEORY?
A. IT WAS CALLED THE CONSTITUTIONAL HYPOTHESIS THAT THE PROBLEM WASN'T CIGARETTES. THE PROBLEM WAS AN INHERENT WEAKNESS IN SOME SMOKERS.
Q. NOW, OVER THE YEARS, HAVE YOU LOOKED AT THE GALLUP POLLS TO SEE WHAT THE PUBLIC KNOWLEDGE AND PUBLIC OPINION WAS WITH RESPECT TO HOW MUCH THEY HAD HEARD AND BELIEVED ABOUT CIGARETTE SMOKING AND HEALTH PROBLEMS?
A. YES, I HAVE. AND YOUR QUESTION USES BOTH "HEARD" AND "BELIEVED." THAT'S AN IMPORTANT DISTINCTION.
Q. I WAS GOING TO ASK YOU TO TELL THE JURY WHAT, IF ANYTHING, IS THE DIFFERENCE BETWEEN HEARING SOMETHING AND BELIEVING IT AS IT RELATES TO POLLING?
MR. OHLEMEYER: YOUR HONOR, I DON'T THINK -- AGAIN, MY OBJECTION IS THIS ISN'T A PROPER SUBJECT FOR EXPERT TESTIMONY UNDER 801(A), THE DIFFERENCE BETWEEN HEARING SOMETHING AND BELIEVING.
THE COURT: WELL, I THINK HE'S SAYING -- I THINK THE QUESTION: IS AMONG CONSUMERS, IS THERE A DIFFERENCE BETWEEN THOSE TWO? IS THAT THE QUESTION?
MS. CHABER: YES, AND SPECIFICALLY AS IT RELATES TO POLLING INFORMATION, WHICH IS WHAT WE'RE DISCUSSING.
THE COURT: ALL RIGHT. I'LL ALLOW THAT.
THE WITNESS: IT'S A VERY CRITICAL DISTINCTION. I MEAN, ONE HAS TO LOOK CAREFULLY AT THE WORDING OF QUESTIONS IN ORDER TO INTERPRET THE RESULTS OF ANY POLLING DATA. THERE'S OFTEN QUITE WIDE DISCREPANCIES BETWEEN WHAT PEOPLE HAVE HEARD AND WHAT THEY BELIEVE.

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THE MOST COMMON EXAMPLE ON THAT IS WE HEAR ABOUT MEN FROM MARS, VISITORS FROM OUTER SPACE. THAT DOESN'T MEAN WE BELIEVE THAT TO BE A FACT.
MS. CHABER: Q. SO IF YOU GET A STATISTIC THAT 90 PERCENT OF PEOPLE HAVE HEARD ABOUT UFO'S, IS THAT THE SAME THING AS SAYING THAT 90 PERCENT OF THE PEOPLE BELIEVE IN UFO'S?
A. ABSOLUTELY NOT. THEY'RE QUITE DIFFERENT.
Q. AND OVER THE TIME PERIOD IN LOOKING AT GALLUP

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POLLS -- FIRST, I ASSUME THAT THE RESULTS OF GALLUP POLLS RELATING TO SMOKING AND PUBLIC OPINION HAS CHANGED OVER TIME?

A. YES, IT HAS.

Q. AT WHAT POINT IN TIME, LOOKING AT GALLUP POLLS AND OTHER POLLING DATA, IS IT CLEAR THAT THE MAJORITY OF CONSUMERS, OR AT LEAST THOSE RESPONDING TO THE GALLUP POLL OR WHATEVER OTHER POLLING, HADN'T HEARD THAT CIGARETTE SMOKING WAS ONE OF THE CAUSES OF LUNG CANCER?

A. I THINK THE MAJORITY HAD HEARD OF ALLEGATION -- HAD EITHER HEARD THE ALLEGATIONS OR HEARD SECONDHAND OF THE ALLEGATIONS IN THIS TIME PERIOD WE HAVE BEEN TALKING ABOUT. THAT IS IN THE 1950S.

Q. AND WOULD THAT BE CONSISTENT WITH THE FACT THAT THERE WAS SOME NEWS COVERAGE OF THE PUBLIC HEALTH COMMENTS?

A. YES.

Q. AND THAT THERE WAS A GREATER AMOUNT OF COVERAGE OF THE CONTROVERSY ON THE HEALTH PROBLEMS?

A. YES.

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Q. AT WHAT POINT IN TIME DID THE MAJORITY OF THE CONSUMING PUBLIC BELIEVE THAT CIGARETTE SMOKING CAUSED LUNG CANCER?

A. BELIEVED IN CAUSE? A MUCH LATER DATE. UNFORTUNATELY, I DON'T REMEMBER OFF TOP OF MY HEAD. IT'S IN A DOCUMENT THAT I REVIEWED A COUPLE OF MONTHS AGO. BUT I BELIEVE IT'S NOT UNTIL 1960 OR SO, MAYBE EVEN LATER THAN THAT. I BELIEVE IN THESE DAYS IT'S A VERY SMALL NUMBER. SOMETHING LIKE 8 PERCENT ACCEPT THE CANCER LINK.

Q. AND WHEN YOU SAY "ACCEPT THE CANCER LINK," WHAT DO YOU MEAN BY THAT?

A. THAT THEY FEEL THAT THERE HAS BEEN SUFFICIENT EVIDENCE THAT THERE IS A LINKAGE THAT CIGARETTES DO CAUSE CANCER.

Q. AND IN YOUR PROFESSIONAL OPINION, WAS THE CAMPAIGN CONDUCTED BY THE HILL AND KNOWLTON AND THE TOBACCO INDUSTRY SUCCESSFUL AS HAVING THE EFFECT ON THE CONSUMER THAT THE LINK HAD NOT BEEN ESTABLISHED?

A. YES.

Q. I'VE GIVEN YOU SOME ADDITIONAL BINDERS UP THERE, DOCTOR.

AND YOUR HONOR, I'M GOING TO BE MAKING REFERENCE TO PLAINTIFF'S EXHIBIT 20 AND A COUPLE OF DOCUMENTS IN THAT BINDER.

Q. IN 20-13, WHAT IS THIS A MEMORANDUM ABOUT?

MR. OHLEMEYER: EXCUSE ME, YOUR HONOR.

THE COURT: SUSTAINED.

MS. CHABER: Q. ARE THERE DISCUSSIONS, DOCTOR,

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ABOUT HOW THE TIRC AND HILL AND KNOWLTON WAS GOING TO GO ABOUT PICKING A SCIENTIFIC DIRECTOR?

MR. OHLEMEYER: SAME OBJECTION.

THE COURT: SAME RULING.

MS. CHABER: Q. WHAT WAS THE PROCESS BY WHICH HILL AND KNOWLTON AND THE TIRC PICKED A SCIENTIFIC DIRECTOR?

A. WELL, THEY WERE SCANNING VARIOUS LISTS OF -- YOU KNOW, A WHO'S WHO TYPE OF LIST; THAT IS, THE NAMES OF PEOPLE IMPORTANT IN MEDICINE, AMERICAN MEN AND WOMEN OF SCIENCE AND SO ON, USING PEOPLE IN THE INDUSTRY AND ON THE TIRC COMMITTEE.

Q. AND BEFORE THEY INTERVIEWED A SCIENTIFIC

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DIRECTOR, DID THEY REQUIRE INFORMATION AS TO WHAT THAT PERSON'S VIEWPOINT WAS ON CIGARETTE SMOKING AND LUNG CANCER?
A. YES, BOTH IN GENERAL AND IN SPECIFIC TO THEIR REACTIONS TO THINGS LIKE THE MOUSE-PAINTING STUDIES AND THE RECENT STATISTICAL EVIDENCE THAT HAD SURFACED.
Q. AND THE INDICATION OF THIS DOCUMENT IS THAT THEY NEEDED TO FIND SOMEONE WHO WAS SAFE?
MR. OHLEMEYER: OBJECTION, YOUR HONOR. THAT IS --
THE COURT: COUNSEL, THAT DOCUMENT IS NOT IN EVIDENCE. IT IS NOT APPROPRIATE TO REFER TO THE CONTENT --
MS. CHABER: I THOUGHT IT WAS.
THE COURT: EXCUSE ME, COUNSEL.
MS. CHABER: EXCUSE ME.
THE COURT: DON'T INTERRUPT ME. I'M TELLING YOU WHEN A DOCUMENT IS NOT IN EVIDENCE, IT IS NOT APPROPRIATE TO

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REFER TO THE CONTENT OF IT. THERE WAS A PREVIOUS OBJECTION MADE TO THE VERY SAME KIND OF QUESTION AND I SUSTAINED IT. SO YOU ARE GOING TO NEED TO CONFORM YOUR CONDUCT TO MY RULINGS.
NOW, WHAT DID YOU WANT TO SAY?
MS. CHABER: I'D LIKE TO MOVE THE DOCUMENT INTO EVIDENCE.
THE COURT: LET'S SEE IF THERE IS AN OBJECTION.
MR. OHLEMEYER: THERE IS, YOUR HONOR.
THE COURT: AND WHAT ARE THE LEGAL GROUNDS?
MR. OHLEMEYER: FOUNDATION.
THE COURT: SUSTAINED.
MS. CHABER: Q. DO YOU KNOW WHO IS THE AUTHOR OF THIS DOCUMENT?
A. IT'S INITIALED "HRH?" BUT THAT'S DONE IN PEN. SO IT'S NOT CLEAR WHETHER THAT WAS ORIGINAL TO THE DOCUMENT OR ADDED SUBSEQUENTLY. THE DOCUMENT MAKES REFERENCE TO VARIOUS MEMBERS.
THE COURT: DON'T TELL US THE CONTENTS OF THE DOCUMENT, PLEASE. IT'S NOT IN EVIDENCE.
MS. CHABER: Q. DOES THE DOCUMENT MAKE REFERENCE TO VARIOUS MEMBERS OF THE COMMITTEE?
I'M NOT ASKING FOR NAMES. IT'S FOUNDATIONAL, YOUR HONOR.
THE COURT: OKAY.
MS. CHABER: Q. DOES THE DOCUMENT MAKE REFERENCE TO VARIOUS MEMBERS OF THE COMMITTEE WHOSE RESPONSIBILITY IT WAS TO SELECT A SCIENTIFIC DIRECTOR?

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A. YES.
Q. AND DOES THE DOCUMENT REFERENCE THE AUTHOR OF THE DOCUMENT AS BEING SOMEBODY WHO HAS JOINED IN AS A PERSON INVOLVED IN THAT ACTIVITY AND RESPONSIBILITY OF SELECTING THE SCIENTIFIC EDITOR?
MR. OHLEMEYER: YOUR HONOR, I OBJECT TO THIS.
THE COURT: SUSTAINED.
MS. CHABER: Q. EXHIBIT 20-15, FEBRUARY 23RD, 1955. IS THIS A PRESS RELEASE?
A. YES, IT IS.
Q. OF THE AMERICAN TOBACCO COMPANY?
A. YES.
Q. WERE THEY A MEMBER OF THE TOBACCO INDUSTRY RESEARCH COMMITTEE?
A. YES, THEY WERE.

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MS. CHABER: AND I WOULD MOVE THIS DOCUMENT INTO EVIDENCE, YOUR HONOR.
MR. OHLEMEYER: THE OBJECTIONS ARE HEARSAY, RELEVANCE AND 352, YOUR HONOR.
MS. CHABER: MAY I LAY ONE FURTHER GROUND, YOUR HONOR, THAT MIGHT HELP YOU?
THE COURT: HE DIDN'T OBJECT ON LACK OF FOUNDATION, BUT YOU CAN.
MS. CHABER: Q. WAS MR. HAHN ALSO INVOLVED IN THE TIRC?
A. HE WAS THE PRINCIPAL FOUNDER. HE WAS THE INITIAL LEADER OF TIRC.
MS. CHABER: I WOULD RENEW MY OFFER, YOUR HONOR.

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MR. OHLEMEYER: SAME OBJECTIONS, YOUR HONOR.
THE COURT: RELEVANCE, 352, AND WHAT WAS THE OTHER ONE?
MR. OHLEMEYER: HEARSAY.
MS. CHABER: IT'S AN ADMISSION, YOUR HONOR.
THE COURT: WE'RE GOING TO NEED TO HEAR YOU BRIEFLY ON THIS. IF IT GETS INTO EVIDENCE, WERE YOU GOING TO ASK ANY FURTHER QUESTIONS ABOUT IT OR NOT? BECAUSE IF NOT, I COULD JUST RESERVE RULING. BUT IF YOU WERE, I NEED TO HAVE A BRIEF SIDEBAR WITH YOU.
MS. CHABER: I WAS GOING TO ASK A QUESTION. BUT IN THE INTEREST OF TIME, I'LL COME BACK TO THIS DOCUMENT, YOUR HONOR.
THE COURT: I'M GOING TO NEED TO MEET WITH YOU. WHY DON'T WE JUST TAKE A MINUTE AND I'LL TALK ABOUT IT WITH YOU.
MS. CHABER: ALL RIGHT.
(COURT AND COUNSEL CONFER OUTSIDE
THE PRESENCE OF THE JURY)
THE COURT: OKAY. BACK ON THE RECORD. HAVING DONE THE 352 BALANCING, I'M GOING TO RECEIVE 20-15, SUBJECT TO A MOTION TO STRIKE, MR. OHLEMEYER, IF YOU LATER WISH TO MAKE IT. SO I'M GOING TO RECEIVE IT. AT THE PRESENT, 20-15 IS IN.
MS. CHABER: THANK YOU.
(DOCUMENT MORE PARTICULARLY
DESCRIBED IN THE INDEX RECEIVED
IN EVIDENCE AS PLAINTIFF'S

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EXHIBIT # 20-15)
MS. CHABER: IS THIS A DOCUMENT THAT QUOTES MR. HAHN, THE PRESIDENT OF AMERICAN TOBACCO AND ONE OF THE FOUNDING MEMBERS OF THE TIRC?
A. IT IS.
Q. AND IS THIS A DOCUMENT THAT ADDRESSES WHAT THE EFFECT OF THE TIRC AND HILL AND KNOWLTON'S ACTIONS ARE ON THE CONSUMING PUBLIC?
A. YES, IT DOES.
Q. AND WHAT IS THE EFFECT ON THE CONSUMING PUBLIC?
A. THE PUBLIC IS REALIZING THAT NO REAL CASE HAS BEEN PROVED AGAINST TOBACCO, THAT THE PRESENT STATE OF KNOWLEDGE IS INADEQUATE TO JUSTIFY CONCLUSIONS.
MS. CHABER: NOW I WANT TO MOVE ON TO ANOTHER DOCUMENT, AND THAT IS IN BINDER 14. THAT WOULD BE 14-52.
MAY I ASK AN UNRELATED QUESTION, YOUR HONOR, WHILE PEOPLE ARE GETTING THEIR BINDERS?
THE COURT: SURE.

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MS. CHABER: Q. YOU INDICATED EARLIER TODAY AND YESTERDAY THAT LIGGETT & MYERS HAD NOT INITIALLY JOINED THE TIRC. DID THEY JOIN AT SOME POINT?
A. THEY BECAME PARTY TO THIS CONCERTED INDUSTRY ORGANIZATION IN THE 1960S.
Q. AND DID THEY CONTRIBUTE TO THE FUNDING?
A. YES, THEY DID.
Q. AND DID THEY CONTRIBUTE TO AND PARTICIPATE IN THE TIRC?
A. WELL, AT THAT TIME IT MAY HAVE BEEN CALLED THE

TOBACCO INSTITUTE AND CTR. BUT YES, THEY BECAME A PARTY TO THE CONCERTED INDUSTRY ACTIONS.
Q. AND THE TOBACCO INSTITUTE AND THE CTR ARE THE TIRC DIVIDED INTO TWO PARTS?
A. THAT'S CORRECT. THAT'S HOW IT EVOLVED, SPLITTING UP THE DIFFERENT ROLES.
Q. AND THE TOBACCO INSTITUTE'S ROLE WAS WHAT?
A. BOTH PUBLIC ADVOCACY AND LOBBYING.
Q. DOCUMENT 14-52, A MAY 1ST, 1952 MEMORANDUM. WHO IS HORACE R. KORNEGAY?
A. HE I BELIEVE AT THE TIME WAS HEAD OF THE TOBACCO INSTITUTE.
Q. AND MR. FRED PANZER?
A. I BELIEVE HE WAS ON THE STAFF OF THE TOBACCO INSTITUTE.
Q. AND WHAT IS ROPER?
A. ROPER IS A POLLING ORGANIZATION. ROPER POLLS ARE LIKE GALLUP POLLS, MAJOR NATIONAL POLLING FIRMS THAT CONDUCTED MARKET RESEARCH, POLITICAL OPINION POLLS AND THE LIKE.
Q. AND IN YOUR REVIEW OF DOCUMENTS AND MATERIALS RELATING TO CIGARETTES, DID THE TOBACCO INDUSTRY RETAIN THE SERVICES OF ROPER ON VARIOUS OCCASIONS TO CONDUCT POLLING?
A. YES, THEY DID.
MS. CHABER: YOUR HONOR, I WOULD MOVE THIS DOCUMENT INTO EVIDENCE.
MR. OHLEMEYER: OBJECTION FOR THE SAME REASONS AS THE LAST ONE, YOUR HONOR, AND I UNDERSTAND YOU'LL MAKE

THE SAME RULING.
THE COURT: LET ME JUST QUICKLY READ IT.
MS. CHABER: Q. DO YOU HAVE A DOCUMENT IN FRONT OF YOU?
A. I DO.
THE COURT: I HAVEN'T RULED YET.
MS. CHABER: OH, I'M SORRY.
THE COURT: LET ME ASK MR. OHLEMEYER A QUESTION. I HAVE READ IT QUICKLY. IF YOU WANT TO BE HEARD FURTHER ON YOUR 352 OBJECTION, I WILL HAVE A BRIEF SIDEBAR WITH YOU. IF NOT --
MR. OHLEMEYER: WE DISCUSSED THIS ONE LAST NIGHT, YOUR HONOR.
MS. CHABER: THIS WAS ONE OF THE ONES YOUR HONOR RULED ON LAST NIGHT.
THE COURT: ALL RIGHT. THEN HAVING DONE THE WEIGHING, 14-52 IS RECEIVED, SUBJECT TO A MOTION TO STRIKE.
(DOCUMENT MORE PARTICULARLY DESCRIBED IN THE INDEX RECEIVED IN EVIDENCE AS PLAINTIFF'S EXHIBIT # 14-52)

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MS. CHABER: Q. IS THIS DOCUMENT A SUMMARY OF THE ACTIVITIES THAT HAVE BEEN UNDERTAKEN BY THE TIRC AND THEN SUBSEQUENTLY THE TOBACCO INSTITUTE?
A. IT OUTLINES THEIR STRATEGY.
Q. AND WHAT IS THE STRATEGY THAT IT OUTLINES?
MR. OHLEMEYER: EXCUSE ME, YOUR HONOR. I DON'T MEAN TO BELABOR IT. BUT HE'S GOING TO BE READING FROM A

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DOCUMENT OR SUMMARIZING WHAT THE DOCUMENT SAYS, AND I DON'T THINK THAT IS A PROPER AREA OF TESTIMONY FROM THIS WITNESS.
THE COURT: IF THAT'S WHAT HE'S BEING ASKED TO DO, I'LL SUSTAIN.
MS. CHABER: Q. IN YOUR OPINION, DID THE TOBACCO INSTITUTE ON BEHALF OF THE TOBACCO INDUSTRY CONTINUE IN ITS DENIALS OF THE CONNECTION BETWEEN CANCER AND SMOKING AS OF 1972?
A. YES, THEY DID. THEIR STRATEGY WAS ESSENTIALLY UNCHANGED DURING THESE TWO, THREE DECADES.
Q. AND DID THEY SUGGEST THE TIME FRAME THAT WOULD BE APPROPRIATE TO MODIFY THE STATEMENTS THAT THEY HAD MADE THAT THERE HAD BEEN NO LINK PROVEN?
A. IN A GENERAL SENSE, PERHAPS. I MEAN, THEY WERE CERTAINLY CONSIDERING DOING RESEARCH TO TAP PUBLIC OPINION AND ATTITUDES AT THAT POINT IN TIME TO SEE WHETHER THE STRATEGY THEY HAD BEEN PURSUING WAS STILL THE APPROPRIATE ONE.
Q. AND DID THEY DISCUSS WHAT THEY WOULD DO IF RESEARCH PROVED TO BE FAVORABLE?
MR. OHLEMEYER: YOUR HONOR, ALL THIS IS IS A REQUEST FOR THE WITNESS TO SUMMARIZE THE DOCUMENT. I OBJECT TO IT.
THE COURT: SUSTAINED.
MS. CHABER: Q. I WANT YOU TO ASSUME THAT THE TOBACCO INSTITUTE ON BEHALF OF THE TOBACCO INDUSTRY WOULD PUBLISH FAVORABLE RESEARCH AND NOT PUBLISH UNFAVORABLE RESEARCH. WHAT EFFECT WOULD THAT HAVE ON THE ORDINARY

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CONSUMER OF CIGARETTES?
A. IT WOULD GIVE THEM A VERY BIASED VIEW. IT WOULD KEEP FROM THEIR KNOWLEDGE ANYTHING THAT WAS HARMFUL TO THE INDUSTRY AND THEY WOULD HEAR ONLY OF THINGS THAT AID THE INDUSTRY.
Q. WHAT WOULD BE THE EFFECT ON A CONSUMER EXPECTATION OF SAFETY OF A PRODUCT IF THE TOBACCO COMPANIES THEMSELVES WERE TO ISSUE INFORMATION THAT SHOWED A LINK BETWEEN CIGARETTE SMOKING AND CANCER?
MR. OHLEMEYER: YOUR HONOR, I DON'T MEAN INTERRUPT AGAIN. I DON'T THINK IT'S PROPER TO SHOW A HIGHLIGHTED PORTION OF A DOCUMENT THAT DOESN'T CORRESPOND TO THE WITNESS' TESTIMONY.
THE COURT: I CAN'T SEE WHAT IS BEING SHOWN. IF YOU ARE DONE WITH THAT, WHY DON'T YOU TAKE IT OFF. LET'S FOLLOW THE PRACTICE THROUGHOUT THE WHOLE TRIAL, COUNSEL, THAT WHEN YOU ARE NO LONGER ASKING ABOUT DOCUMENTS, LET'S TAKE THEM OFF OF THE SCREEN, JUST THROUGHOUT THE TRIAL.
MS. CHABER: IT'S MY FAULT. MS. WHITE COULDN'T FOLLOW WHERE I WAS.
THE COURT: THAT'S OKAY. BUT I THINK IT IS DISTRACTING TO THE JURY TO BE LOOKING AT SOMETHING WHEN QUESTIONS ARE BEING ASKED ABOUT SOMETHING ELSE.
DO YOU HAVE THE QUESTION IN MIND?

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THE WITNESS: YES, BUT I THINK FOR CLARITY I WOULD LIKE TO HAVE IT READ BACK.
MS. CHABER: YES.
(RECORD READ)

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THE WITNESS: THAT WOULD HAVE A VERY PROFOUND EFFECT. THAT WOULD BE EQUIVALENT OF A CONFESSION AND WOULD BE GIVEN A LOT OF CREDENCE, THAT IS BELIEVABILITY. THE PUBLIC WOULD TAKE THAT VERY SERIOUSLY, BECAUSE THE INDUSTRY HAS BOTH TECHNICAL KNOWLEDGE TO BE AWARE OF THE RESEARCH ABOUT TOBACCO, AND OF COURSE THAT WOULD BE AGAINST THEIR OWN ECONOMIC INTERESTS. AND SO THEY WOULD SEE THAT AS DEFINITELY TO BE BELIEVED.
MS. CHABER: EXHIBIT 20-25. DOES THE COURT HAVE IT?
THE COURT: YES.
MS. CHABER: Q. WHO IS MR. BOWLING?
A. MR. BOWLING IS AN EXECUTIVE WITH PHILIP MORRIS COMPANY.
Q. AND MR. CULLMAN IS AS WELL?
A. YES, HE IS.
Q. AND MR. MORGAN IS A PHILIP MORRIS EMPLOYEE?
A. AS WELL, YES.
Q. AND THIS IS MARCH 24TH, 1981?
A. YES.
MS. CHABER: I WOULD OFFER THIS DOCUMENT INTO EVIDENCE.
MR. OHLEMEYER: NO OBJECTION, YOUR HONOR.
THE COURT: 20-25 IS RECEIVED.
(DOCUMENT MORE PARTICULARLY DESCRIBED IN THE INDEX RECEIVED IN EVIDENCE AS PLAINTIFF'S EXHIBIT # 20-25)

0200

MR. OHLEMEYER: YOUR HONOR.
MS. CHABER: DO YOU HAVE A PROBLEM WITH HIGHLIGHTING?
MR. OHLEMEYER: I HAVE A PROBLEM WITH ASKING THE WITNESS TO SUMMARIZE SOMETHING THAT'S HIGHLIGHTED ON THE SCREEN. IF THE WITNESS CAN'T SUMMARIZE IT, THE ATTORNEYS SHOULDN'T BE ABLE TO HIGHLIGHT IT.
THE COURT: IS THAT HIGHLIGHTED?
MR. OHLEMEYER: YES.
THE COURT: IT SHOULDN'T BE. THE DOCUMENT THAT'S IN EVIDENCE IS NOT HIGHLIGHTED AND SO ANYTHING ON THE SCREEN HAS TO CONFORM PRECISELY THROUGHOUT THE TRIAL TO THE DOCUMENT IN ITS FORM AS ADMITTED. OTHERWISE, YOU MAY NOT SHOW ANYTHING ON THE SCREEN THAT DEPARTS IN ANY RESPECT FROM THE DOCUMENT IN EVIDENCE. SO YOU NEED TO TAKE THAT DOWN. I CAN'T SEE IT.
MS. CHABER: WE HAVE TAKEN IT DOWN.
THE COURT: OKAY. IF THAT'S WHAT IT DID, YOU CAN'T USE IT. I CAN'T SEE IT FROM HERE.
MS. CHABER: Q. THIS DOCUMENT OF MARCH 24TH, 1981, IS THIS DOCUMENT CONSISTENT WITH THE ACTIONS OF THE TOBACCO INSTITUTE AND THE TOBACCO INDUSTRY WITH RESPECT TO THEIR POSITION THAT CIGARETTE SMOKING DOES NOT CAUSE LUNG CANCER?
A. YES.
Q. AND WHAT ACTIONS ARE PROPOSED IN THIS REGARD IN 1981?

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28 A. FOR THE AGGRESSIVE ACTIONS ATTACKING THE

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RESEARCHERS AND THE RESEARCH THAT SERVES TO ESTABLISH THE CIGARETTE-CANCER LINKAGE.
Q. AND IS THERE AN ATTEMPT -- STRIKE THAT. IS THERE A PROPOSAL FOR ACTION TO ATTACK THE PUBLIC HEALTH COMMUNITY AS WELL?
A. YES.
Q. AND HOW IS THIS ATTACK TO TAKE PLACE ON BOTH THE RESEARCHERS AND THE PUBLIC HEALTH COMMUNITY?
MR. OHLEMEYER: YOUR HONOR, I OBJECT TO THIS AS ASKING THE WITNESS --
THE COURT: SUSTAINED.
MS. CHABER: Q. WHAT ACTIONS ARE TO BE UNDERTAKEN BY THE TOBACCO INDUSTRY?
MR. OHLEMEYER: SAME OBJECTION.
THE COURT: ISN'T THAT THE SAME QUESTION? ANYWAY, SUSTAINED.
MS. CHABER: Q. IF THESE ACTIONS THAT WE'VE JUST DISCUSSED WERE PUT INTO PLACE, WHAT EFFECT WOULD THAT HAVE ON THE CONSUMER EXPECTATION AS TO THE SAFETY OF SMOKING CIGARETTES IN 1981?
A. IT WOULD SERVE TO UNDERMINE THE CREDIBILITY OF THOSE PEOPLE WHOSE RESEARCH WAS FINDING LINKAGES BETWEEN CANCER AND SMOKING AND SO SERVE AS A REASSURANCE TO SMOKERS THAT THAT RESEARCH WAS WEAK AND SHOULDN'T BE RELIED UPON.
Q. THE NEXT DOCUMENT IS 20-33. AND THIS IS A MARCH 29TH, 1985 DOCUMENT REGARDING THE PERSPECTIVE --
MR. OHLEMEYER: EXCUSE ME, YOUR HONOR. I OBJECT TO DESCRIBING WHAT THE DOCUMENT IS REGARDING BEFORE IT'S IN

0202
EVIDENCE.
MS. CHABER: I WAS IDENTIFYING IT, YOUR HONOR.
THE COURT: SUSTAINED.
MS. CHABER: Q. IS THIS A DOCUMENT THAT DISCUSSES BOTH PHILIP MORRIS INTERNATIONAL POLICY AS WELL AS WHAT IS TAKING PLACE IN THE UNITED STATES?
MR. OHLEMEYER: SAME OBJECTION.
THE COURT: LOOK, MS. CHABER, MY RULING WHICH WILL APPLY TO ANY DOCUMENT IN THIS CASE AND WILL APPLY TO BOTH SIDES IS THAT YOU MAY NOT REFER TO THE CONTENT OF DOCUMENTS THAT ARE NOT IN EVIDENCE. SO I'M GOING TO SUSTAIN.
MS. CHABER: I WOULD MOVE 20-33 INTO EVIDENCE AS AN ADMISSION OF A PARTY.
MR. OHLEMEYER: OBJECT TO IT, YOUR HONOR, ON RELEVANCE GROUNDS AND 352 GROUNDS AND FOUNDATIONAL GROUNDS.
THE COURT: SUSTAINED. IT'S SUSTAINED ON FOUNDATION BY THE COURT.
MS. CHABER: Q. WHO IS HAMISH MAXWELL?
A. HE WAS CHIEF EXECUTIVE OFFICER OF PHILIP MORRIS.
Q. AND DID MR. MAXWELL GET INVOLVED IN THE CONTINUING PUBLIC RELATIONS ACTIVITIES OF THE TOBACCO INSTITUTE WITH RESPECT TO HEALTH ISSUES AND CIGARETTE SMOKING?
A. YES, AND INDEPENDENTLY FOR PHILIP MORRIS AS WELL.
MS. CHABER: AND I'M REFERRING TO EXHIBIT 20-29 I WOULD OFFER THIS DOCUMENT INTO EVIDENCE, YOUR HONOR, AS AN ADMISSION OF A PARTY.

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MR. OHLEMEYER: YOUR HONOR, I OBJECT TO IT ON FOUNDATION, RELEVANCE AND 352.
THE COURT: SUSTAINED ON FOUNDATION.
MS. CHABER: COULD WE HAVE A SIDEBAR ON THAT, YOUR HONOR, ON THESE LAST TWO DOCUMENTS?
THE COURT: OKAY.
MS. CHABER: THESE ARE THE LAST TWO DOCUMENTS.
THE COURT: OKAY. ALL RIGHT.
(COURT AND COUNSEL CONFER OUTSIDE
THE PRESENCE OF THE JURY)
MS. CHABER: Q. FROM THE MATERIALS AND ALL THE EVIDENCE THAT YOU HAVE REVIEWED AND YOUR EXPERIENCE, TRAINING, KNOWLEDGE AND EDUCATION IN THIS AREA, DID PHILIP MORRIS INVOLVE THEMSELVES IN DETERMINING WHAT ATTITUDES SMOKERS HAD TOWARDS HEALTH ISSUES?
A. YES, CERTAINLY.
Q. AND DID THEY ANALYZE THAT INFORMATION?
A. YES.
Q. AND DID THEY ACT IN ACCORDANCE WITH THAT INFORMATION WITH RESPECT TO THE WAY THEY SOLD THEIR PRODUCT?
A. YES.
Q. AND BASED ON EVERYTHING THAT YOU HAVE REVIEWED, YOUR KNOWLEDGE, SKILL, TRAINING, WHAT WOULD THE EXPECTATION OF THE ORDINARY CONSUMER BE WITH RESPECT TO THE SAFETY OF PHILIP MORRIS' CIGARETTES?
MR. OHLEMEYER: OBJECTION, YOUR HONOR, AS TO TIME.
THE COURT: AT WHAT TIME?

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MS. CHABER: OVER THE ENTIRE PERIOD THAT THEY WERE SOLD.
THE COURT: IS THERE AN OBJECTION?
MR. OHLEMEYER: NO, IF THAT'S THE QUESTION. THAT'S WHAT I WANTED TO KNOW.
THE COURT: IF THERE IS NO OBJECTION, YOU CAN GO AHEAD.
THE WITNESS: OVER THE ENTIRE PERIOD -- THE PERIOD WE HAVE BEEN DISCUSSING IS THE '50S THROUGH THE PRESENT, THE LATTER PART OF THE 20TH CENTURY -- I THINK THERE WOULD BE THROUGHOUT THAT PERIOD AN UNDERAPPRECIATION OF THE MAGNITUDE AND VARIETY OF HEALTH RISKS PRESENT IN SMOKING CIGARETTES. TO THE EXTENT THERE WAS AN AWARENESS OF RISKS, IT WOULD BE FAR LESS THAN THE AWARENESS WITHIN THE SCIENTIFIC COMMUNITY AND WOULD TEND TO BE FOCUSED ON A FEW CHARACTERISTIC PROBLEMS, INITIALLY THROAT AND THROAT IRRITATION, MORE RECENTLY LUNG CANCER.
MS. CHABER: Q. AND WITH RESPECT TO THE ORDINARY CONSUMER, IF THE ORDINARY CONSUMER BEGAN SMOKING IN THE 1960S, WOULD THAT PERSON HAVE SEEN STATEMENTS, WARNINGS, PACKAGE INSERTS OR ANY OTHER MATERIALS FROM THE CIGARETTE INDUSTRY THAT STATED THAT CIGARETTE SMOKING WAS A CAUSE OR ONE OF THE GREATEST CAUSES OF LUNG CANCER?
A. THEY WOULD HAVE SEEN NOTHING FROM THE CIGARETTE INDUSTRY IN THOSE DAYS.
MS. CHABER: I HAVE NOTHING FURTHER, YOUR HONOR.
THE COURT: OKAY. MR. OHLEMEYER.
MR. OHLEMEYER: MAY WE HAVE THE LIGHTS UP, YOUR

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HONOR.

CROSS-EXAMINATION

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BY MR. OHLEMEYER: Q. DR. POLLAY, I INTRODUCED MYSELF YESTERDAY. MY NAME IS BILL OHLEMEYER AND I REPRESENT PHILIP MORRIS. I WANT TO ASK YOU SOME QUESTIONS -- THIS MAY TAKE A WHILE, SO I WANT TO TELL YOU WHAT I WANT TO ASK YOU. I WANT TO ASK YOU ABOUT YOUR BACKGROUND, YOUR EDUCATION. THEN I WANT TO ASK YOU SOMETHING ABOUT THE WORD YOU MAY HAVE USED OR MAY NOT HAVE USED, THE INFORMATION ENVIRONMENT, THE SERIES OF INFORMATION THAT COME TO BEAR ON PEOPLE'S EXPECTATIONS. THEN I WILL ASK YOU SOME QUESTIONS ABOUT THE TOBACCO INDUSTRY RESEARCH COUNCIL AND THEN I WANT TO TALK ABOUT ADVERTISING IN SOME DETAIL.

BUT BEFORE WE GO TO LUNCH, LET ME ASK YOU A COUPLE OF QUESTIONS ABOUT ADVERTISING. YOU TEACH ADVERTISING AT A COLLEGE IN BRITISH COLUMBIA?

A. YES, AT THE UNIVERSITY OF BRITISH COLUMBIA.

Q. AND IS WHAT YOU ARE TEACHING STUDENTS, HOW TO CREATE ADVERTISEMENTS AND CREATE AD CAMPAIGNS AND THE LIKE?

A. BOTH THE CREATIVE SIDE AND ALSO THE STATISTIC SIDE; THAT IS, HOW TO ANALYZE A BUSINESS SITUATION, TO DECIDE WHAT KIND OF ADVERTISING IS APPROPRIATE, WHAT TARGET MARKETS TO SELECT, WHAT MEDIA TO CHOSE AND SO ON.

Q. AND ARE THERE TOOLS AVAILABLE TO AN ADVERTISER TO MAKE THOSE KINDS OF DECISIONS?

A. YES.

Q. I THINK YOU MENTIONED POLLS EARLIER. IS THAT

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ONE?

A. POLLS, A VARIETY OF MARKET RESEARCH, TECHNIQUES, FOCUS GROUPS, TEST MARKETS, PRODUCT DEVELOPMENT PROCEDURES, MEDIA PLANNING, COMPUTER PROGRAMS AND SO ON.

Q. TELL US WHAT A FOCUS GROUP IS.

A. A FOCUS GROUP IS A GATHERING OF PEOPLE WHO REPRESENT POTENTIAL TARGET CONSUMERS AND WHO DISCUSS THE PRODUCT OR THE AD, DEPENDING ON THE NATURE OF THE FOCUS GROUP, IN SUBSTANTIAL DETAIL. SO THAT'S WHERE THE WORD "FOCUS" COMES FROM. THEY'RE CONSTRAINED IN THEIR DISCUSSION TO PURSUING A PARTICULAR PRODUCT AND ITS USE AND ITS MEANING TO THEM AND THEIR LIVES IN QUITE BELABORED DETAIL.

Q. ARE FOCUS GROUPS USED TO HELP SELECT ADVERTISEMENTS OR CHOSE BETWEEN ALTERNATIVES FOR ADVERTISING?

A. SOMETIMES, YES.

Q. AND IF I UNDERSTAND -- STRIKE THAT. ONE OF THE THINGS YOU TOLD US ABOUT YESTERDAY, YOU SHOWED US SOME ADVERTISEMENTS AND THEN YOU GAVE US YOUR OPINIONS ABOUT WHAT PEOPLE MIGHT HAVE EXPECTED HAVING SEEN THOSE ADVERTISEMENTS; RIGHT?

A. YES, AND WHAT THE CENTRAL MESSAGES OF THE ADVERTISEMENTS SEEMED TO BE.

Q. DID YOU BASE ANY OF THOSE OPINIONS ON FOCUS GROUPS?

A. SOME. I'VE SEEN FOCUS GROUPS IN, FOR EXAMPLE, THE MANGINI DOCUMENTS WITH CAMEL CAMPAIGNS AND THE LIKE. I

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HAVE SEEN LOTS OF FOCUS GROUP RESULTS. BUT I HAVE NOT SEEN FOCUS GROUPS FOR MANY OF THE HISTORICAL MATERIALS, BECAUSE I DON'T THINK THAT WAS THE INDUSTRY PRACTICE IN THOSE DAYS, SO THERE WAS NO SUCH EVIDENCE AVAILABLE.

Q. SO YOU'VE NEVER CONDUCTED ANY SYSTEMATIC -- OR APPLIED ANY OF THOSE TECHNIQUES YOU JUST TOLD US ABOUT TO

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THOSE OLD ADS YOU SHOWED US YESTERDAY TO FORM YOUR OPINIONS ABOUT EXPECTATIONS THAT MAY PEOPLE MAY OR MAY NOT HAVE HAD AFTER SEEING THOSE ADS?

A. I DON'T HAVE ACCESS TO THE CONSUMERS OF THE 1950S IN ORDER TO FAIRLY EVALUATE THE ADS IN THAT WAY. I MEAN, I DON'T UNDERSTAND YOUR QUESTION. I DON'T SEE HOW A FOCUS GROUP COULD BE APPROPRIATELY USED.

Q. BECAUSE IT'S HARD IN SOME WAYS TO SEPARATE WHAT YOU KNOW TODAY FROM WHAT PEOPLE MIGHT HAVE KNOWN OR BELIEVED BACK THEN?

A. WELL, THAT IS PART OF THE PROBLEM. BUT THE CONSUMERS OF TODAY WOULDN'T BE THE APPROPRIATE SAMPLE. I MEAN, WE'D HAVE TO -- WE CAN'T RECONSTRUCT THE NATURE OF THE CONSUMERS AND THEIR KNOWLEDGE. WE'D HAVE TO DO THAT BASED UPON OUR HISTORICAL UNDERSTANDING.

Q. WOULD YOU AGREE, DOCTOR, THAT THE ORDINARY CONSUMER TODAY IS AWARE THAT ONE OF THE RISKS ASSOCIATED WITH SMOKING IS LUNG CANCER?

A. YES.

Q. AND WOULD YOU AGREE THAT IN 1989, THE SURGEON GENERAL SPECIFICALLY STATED IN THE '89 REPORT THAT THE GENERAL RISKS OF SMOKING ARE WELL-KNOWN?

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A. I DON'T RECALL THAT. I'M CERTAINLY WILLING TO ACCEPT IT IF YOU VOUCH FOR IT.

Q. WELL, UNFORTUNATELY, I DON'T GET TO TESTIFY. SO I EITHER NEED TO -- I CAN SHOW IT TO YOU AND I WILL AFTER LUNCH, IF YOU'D LIKE, OR ASK IF YOU REMEMBER READING THAT IN ANY OF YOUR RESEARCH IN THE 1989 SURGEON GENERAL'S REPORT?

A. MY PROBLEM IS I DON'T HAVE THE SPECIFIC RECOLLECTION OF THAT WORDING, BUT I THINK THAT'S PROBABLY A GENERAL THRUST OF IT, THAT THERE WERE SOME APPRECIATION FOR THE RISKS, PARTICULARLY THE RISKS OF LUNG CANCER.

Q. NOW, EVEN IN THE 1950S, THE GENERAL PUBLIC WAS AWARE AND BECOMING MORE AWARE THAT ONE OF THE RISKS ASSOCIATED WITH CIGARETTE SMOKING WAS LUNG CANCER; ISN'T THAT RIGHT?

A. AS THE GALLUP POLL DATA HAD INDICATED, THERE HAD BEEN KNOWLEDGE OF THE ALLEGATIONS. SO IN THAT SENSE, THERE WAS AWARENESS, BUT THERE WASN'T A BELIEF THAT THERE WAS SUFFICIENT EVIDENCE TO TAKE ACTION OR THAT CAUSATION HAD BEEN DEMONSTRATED.

Q. BECAUSE THERE WAS SOME QUESTION ABOUT WHAT THE EVIDENCE AND THE STUDIES THAT WERE BEING REPORTED IN THE MEDIA ACTUALLY MEANT ON THAT QUESTION; RIGHT?

A. YES.

Q. AND THAT WASN'T JUST TOBACCO COMPANY PEOPLE ASKING THOSE QUESTIONS. IT INCLUDED PEOPLE IN THE PUBLIC HEALTH SERVICE AND SOME OF THE ACTUAL PEOPLE WHO DID THE RESEARCH THAT WAS BEING REPORTED IN THE NEWSPAPER?

A. WELL, ALL SCIENCE HAS QUESTIONS AT THE FRONTIERS

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OF SCIENCE. SO THERE MAY NOT HAVE BEEN MUCH QUESTION ABOUT THE CAUSE, WHETHER CIGARETTES CAUSED CANCER, WHILE THERE WOULD BE REMAINING QUESTIONS ABOUT THE PRECISE BIOMECHANICS OF HOW THAT CAUSE TOOK PLACE, WHAT'S KNOWN AS THE ETIOLOGY.

Q. BUT HAVING SAID ALL THAT, EVEN AS FAR BACK AS THE EARLY 1950S, THE ORDINARY CONSUMER WAS AWARE THAT THE RISKS ASSOCIATED WITH CIGARETTES SMOKING INCLUDED LUNG CANCER?

A. I'M NOT -- NO, I THINK IN THE 1950S, THE AWARENESS WOULD HAVE BEEN WITH RESPECT TO THE ALLEGATIONS,

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BUT THAT THIS WAS A MATTER OF SUBSTANTIAL DOUBT AND A MATTER OF ONGOING RESEARCH.

Q. LET ME ASK YOU THIS, DOCTOR. IS THE RISK ASSOCIATED WITH -- IS THE RISK OF DEVELOPING LUNG CANCER AS A RESULT OF CIGARETTE SMOKING UNDERESTIMATED OR OVERESTIMATED BY THE PUBLIC?

A. AT THE PRESENT TIME?

Q. WELL, LET ME ASK YOU AT THE PRESENT TIME?

A. AT THE PRESENT TIME, I BELIEVE IT TENDS TO BE OVERESTIMATED. THERE TENDS TO BE A HUGE FALLACY THAT PEOPLE SEE LUNG CANCER AS THE PRIMARY HEALTH CONSEQUENCE OF SMOKING AND SO TEND TO OVERESTIMATE THAT RISK, WHILE UNDERESTIMATING OTHER RISKS, LIKE RISKS OF IMPOTENCE AND THINGS LIKE THAT.

MR. OHLEMEYER: YOUR HONOR, DO YOU WANT TO BREAK?

THE COURT: OKAY.

MR. OHLEMEYER: THANK YOU.

THE COURT: ALL RIGHT. JURORS, OVER THE NOON HOUR, PLEASE DO NOT DISCUSS THE CASE WITH ANYONE OR LET ME

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ANYONE DISCUSS IT WITH YOU. PLEASE DO NOT FORM OR EXPRESS ANY OPINIONS ABOUT THE CASE.

HAVE A GOOD LUNCH AND WE'LL RESUME AT 1:30 SHARP, PLEASE. WE'LL SEE YOU THEN.

(LUNCH RECESS TAKEN AT 12:00 NOON)

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AFTERNOON SESSION 1:35 P.M.

TUESDAY, JANUARY 12, 1999

THE COURT: OKAY. WE'RE BACK ON THE RECORD. MR. OHLEMEYER.

MR. OHLEMEYER: THANK YOU, YOUR HONOR.

THE COURT: THIS IS INFORMATION FROM THE DEFENSE?

MR. OHLEMEYER: YES.

THE COURT: THAT'S YOUR LIST OF EXHIBITS?

MR. OHLEMEYER: IN CASE WE USE SOME, YOUR HONOR, I PUT A LIST TOGETHER.

THE COURT: ALL RIGHT.

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CONTINUED CROSS-EXAMINATION

BY MR. OHLEMEYER: Q. GOOD AFTERNOON, DOCTOR. I'M CORRECT, DOCTOR, THE REFERENCE IN YOUR TITLE TO DOCTOR IS NOT MEDICAL DOCTOR; RIGHT?

A. THAT'S CORRECT.

Q. YOU HAVE A BACHELOR'S DEGREE IN ENGINEERING; CORRECT?

A. YES.

Q. THEN YOU GOT MASTER'S IN BUSINESS ADMINISTRATION?

A. THAT'S RIGHT, IN MARKETING.

Q. AND YOU GO TO A BUSINESS SCHOOL FOR THAT; RIGHT?

A. YES.

Q. AND THEN YOU GOT WHAT'S CALLED A PH.D. DEGREE?

A. YES, A DOCTOR OF PHILOSOPHY. THAT WAS IN CONSUMER BEHAVIOR. THE DEGREE ITSELF IS DESCRIBED AS

0212

BEHAVIORAL SCIENCE AND IT INVOLVED TAKING COURSES IN PSYCHOLOGY AND SOCIOLOGY WITH AN APPLICATION TOWARD BUSINESS.

Q. BUT THE SCHOOL -- WHERE DID YOU GET THAT DEGREE?

A. UNIVERSITY OF CHICAGO.

Q. AND WAS IT THE BUSINESS SCHOOL AT THE UNIVERSITY OF CHICAGO THAT AWARDED IT TO YOU?

A. THAT IS THE AWARDING. THE COURSES THEMSELVES WERE TAKEN IN THE SOCIOLOGY DEPARTMENT.

Q. DO YOU HAVE A DEGREE IN HISTORY?

A. NO, I DO NOT. MY ONLY EDUCATION IN HISTORY IS THE POSTDOCTORAL EXPERIENCE AT HARVARD.

Q. HAVE YOU EVER PRACTICED -- DO YOU TEACH HISTORY OR IN THE HISTORY DEPARTMENT AT YOUR UNIVERSITY?

A. NO, I DO NOT. I WRITE HISTORY AND DO JOURNAL WORK IN HISTORY REVIEW ARTICLES, THINGS LIKE THAT.

Q. THE UNIVERSITY OF BRITISH COLUMBIA HAS NO DEPARTMENT OF PUBLIC RELATIONS OR ANYTHING LIKE THAT?

A. THAT'S CORRECT.

Q. AND YOU'VE NEVER WORKED IN A PUBLIC RELATIONS AGENCY OR FOR A PUBLIC RELATIONS AGENCY?

A. THAT'S CORRECT. MY EXPERIENCE IN PUBLIC RELATIONS IS AS AN AUTHOR, STUDENT, TEACHER AND AS A RESEARCHER SEEING HISTORICAL DOCUMENTS.

Q. YOU'VE NEVER CONSULTED WITH ANY PUBLIC RELATIONS AGENCY ON PUBLIC RELATIONS ISSUES?

A. THAT'S CORRECT. MY EXPERIENCE IS, AS I SAY, ACADEMIC AND AS AN AUTHOR, NOT AT A PRACTITIONER.

0213

Q. AND YOU DON'T BELONG TO ANY PUBLIC RELATIONS ORGANIZATIONS OR SOCIETIES?

A. THAT'S CORRECT.

Q. NOW, AM I CORRECT, DR. POLLAY, THAT PHILIP MORRIS DIDN'T INVEST PUBLIC RELATIONS?

A. THAT'S CORRECT.

Q. IT'S A COMMON AND APPROPRIATE PART OF A LOT OF BUSINESSES IN THIS COUNTRY?

A. WELL, HOW APPROPRIATE IT IS DEPENDS UPON WHAT'S BEING PUSHED, WHO IT'S BEING PUSHED TO AND HOW IT'S BEING DONE.

Q. IN PUBLIC RELATIONS, ONE ASPECT OF PUBLIC RELATIONS IS JUST EXPRESSING YOUR OPINION, ISN'T IT?

A. I DON'T -- I DON'T THINK SO. I MEAN, ALMOST ALL PUBLIC RELATIONS HAS A GOAL OF CHANGING THE OPINIONS OF

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OTHERS.
Q. AND SOMETIMES IT IS MORE SUCCESSFUL OR LESS SUCCESSFUL THAN OTHERS?
A. CERTAINLY.
Q. ALL RIGHT. YOU DON'T CONSIDER YOURSELF AN EXPERT ON RISK PERCEPTION, DO YOU?
A. I'VE DONE SOME RESEARCH ON THE TOPIC, BUT THERE ARE OTHERS THAT HAVE DONE MORE RECENT RESEARCH ON THE TOPIC.
Q. AND IN FACT, WHEN YOU SAY OTHERS HAVE DONE RESEARCH, THERE'S A BODY OF LITERATURE OR A SECTION IN THE LIBRARY SOMEWHERE ON RISK PERCEPTION, PROBABLY?
A. WELL I'M NOT SURE HOW BIG THE LITERATURE IS, BUT THERE ARE CERTAINLY SOME WORKS ON THAT TOPIC.

0214

Q. BUT YOU HAVEN'T DONE ANY FORMAL STUDY OR REVIEW OF THAT LITERATURE?
A. NOT A REVIEW OF THE LITERATURE OF LATE. I HAD DONE SOME RESEARCH OF MY OWN IN THE LATE 1980S, BUT NOT SINCE THEN.
Q. YOU'VE NEVER -- LET ME BACK UP. YOU'RE DOCTORATE DEGREE IS NOT IN SOCIOLOGY, IS IT?
A. NO. IT INVOLVED TAKING SOCIOLOGY COURSES, BUT IT'S NOT IN SOCIOLOGY AS SUCH.
Q. THERE ARE PEOPLE WHO CONSIDER THEMSELVES SOCIOLOGISTS, BUT YOU'RE NOT ONE OF THOSE PEOPLE?
A. WELL, IT DEPENDS ON YOUR DEFINITION. I DON'T CURRENTLY BELONG TO ANY SOCIOLOGICAL ORGANIZATIONS, BUT I HAVE PUBLISHED IN SOCIOLOGICAL JOURNALS.
Q. HAVE YOU EVER WRITTEN ANY TEXTBOOKS ON CONSUMER BEHAVIOR?
A. NO, I HAVE NOT. ALL MY WRITING HAS BEEN FOR THE CURRENT RESEARCH JOURNALS AND PERIODICALS. I DON'T AUTHOR TEXTBOOKS.
Q. AND BESIDES WHAT YOU CAN READ OR COLLECTED AS A MATTER OF HISTORICAL FACT, YOU DON'T HAVE ANY EXPERTISE IN MEDICAL ISSUES OR DEVELOPMENT OF KNOWLEDGE ABOUT MEDICAL ISSUES OVER TIME, DO YOU?
A. WELL, I GUESS THAT DEPENDS UPON COMPARED TO WHOM. BECAUSE OF MY INVOLVEMENT IN THE TOBACCO ISSUE, I'VE SEEN SURGEON GENERAL'S REPORTS OVER THE YEARS. AND SO I HAVE A LOT MORE KNOWLEDGE THAN MOST OF MY COLLEAGUES OR MOST PEOPLE, I SUPPOSE. BUT THERE ARE OTHER PEOPLE WHO WOULD

0215

HAVE EVEN MORE KNOWLEDGE THAN I.
Q. BUT YOUR BACKGROUND AND YOUR EDUCATION AND YOUR EXPERIENCE AND EXPERTISE IS NOT IN MEDICAL ISSUES?
A. THAT'S CORRECT. I'M NOT FORMALLY TRAINED IN MEDICINE.
Q. YOU ARE NOT FORMALLY TRAINED IN PSYCHOLOGY?
A. NO. WE TALKED ABOUT THAT. I HAVE DOCTORAL LEVEL COURSES IN PSYCHOLOGY, AND I CONTINUE FROM TIME TO TIME BE EXPOSED TO PSYCHOLOGY COURSES.
Q. DO YOU PRACTICE OR TEACH PSYCHOLOGY?
A. I TEACH APPLIED PSYCHOLOGY IN THE CONSUMER BEHAVIOR AREA AND OTHER APPLICATIONS OF PSYCHOLOGICAL CONCEPT.
Q. THERE IS A SEPARATE PART OF YOUR UNIVERSITY WHERE PEOPLE TEACH STUDENTS ABOUT PSYCHOLOGY IN ORDER FOR THEM TO BECOME PSYCHOLOGISTS; RIGHT?
A. THAT'S CORRECT.
Q. TO A CERTAIN EXTENT, DR. POLLAY, YOU WERE AN

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ORDINARY CONSUMER OF CIGARETTES AT ONE TIME; RIGHT?
A. THAT'S CORRECT.
Q. AND DID YOU SMOKE FILTER OR UNFILTERED CIGARETTES?
A. I SMOKED FILTERED CIGARETTES.
Q. YOU SHOWED US SOME ADVERTISING YESTERDAY FOR SOME CIGARETTES THAT WERE SOLD IN THE '30S AND THE '40S THAT WERE PRIMARILY UNFILTERED; RIGHT?
A. YES.
Q. I THINK ONE OF THEM WAS CAMEL. DO YOU REMEMBER

0216

THAT?
A. YES.
Q. CHESTERFIELD?
A. YES.
Q. AND A BRAND CALLED PHILIP MORRIS MADE BY PHILIP MORRIS; RIGHT?
A. YES.
Q. NOW, PHILIP MORRIS DOESN'T MAKE AND HASN'T MADE CAMEL; RIGHT?
A. THAT'S CORRECT.
Q. THEY DON'T MAKE CHESTERFIELD?
A. THAT'S CORRECT.
Q. AND THEY DIDN'T MAKE AND DON'T MAKE LUCKY STRIKE; RIGHT?
A. THAT'S CORRECT.
Q. BUT BACK IN THE '30S AND THE '40S, THOSE ADVERTISEMENTS TALKED A LOT ABOUT IRRITATION; ISN'T THAT RIGHT?
A. YES.
Q. AND IRRITATION APPEARED TO BE A MORE FREQUENT MESSAGE IN ADVERTISEMENTS OF UNFILTERED CIGARETTES COMPARED TO FILTERED CIGARETTES, DIDN'T IT?
A. IN THOSE DAYS, THERE WEREN'T FILTERED CIGARETTES, SO ALL OF THE CIGARETTE ADVERTISING WAS FOR UNFILTERED PRODUCTS.
Q. LET ME ASK YOU DO YOU HAVE THE BINDER IN FRONT OF YOU THAT HAS ALL THE ADS? WE LOOKED AT IT YESTERDAY?
A. NO, I HAVE NO BINDERS IN FRONT OF ME.

0217

Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS -- ADMITTED AS PLAINTIFF'S EXHIBIT 19, TAB 1-B.
MAY I, YOUR HONOR?
THE COURT: YES.
MR. OHLEMEYER: Q. THIS WAS AN AD FOR PHILIP MORRIS BRAND CIGARETTES THAT YOU TALKED ABOUT YESTERDAY?
A. YES.
Q. AND DID THAT RUN SOMETIME IN THE LATE '30S, DO YOU THINK?
A. LATE '30S OR EARLY '40S, YES, I THINK SO. 1937 IS THE DATE OF THIS PUBLICATION, BUT THE CAMPAIGN WAS A CONTINUING CAMPAIGN FOR A FEW YEARS.
MS. CHABER: I APOLOGIZE FOR INTERRUPTING YOU, BUT WHAT THE WITNESS IS HOLDING CORRESPONDS NOT WITH 19-1-B BUT 19-1-C.
MR. OHLEMEYER: I'M SORRY, YOUR HONOR.
THE COURT: I JUST WANT TO BE SURE. WHO'S GOT IT RIGHT? IS THAT 19-1-B, A TWO-PAGE DOCUMENT?
MR. OHLEMEYER: I MISSPOKE. IT'S TAB 2 -- TAB 2-B. I APOLOGIZE. TAB 2, EXHIBIT B.
THE COURT: TAB 2. OKAY. 2-B. I'M WITH YOU.

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19-2-B. OKAY.
MR. OHLEMEYER: Q. AND THAT AD, I HAVE HIGHLIGHTED SOMETHING ON MY COPY OF THAT AD. DO YOU SEE THAT, DOCTOR?
A. YES.
Q. AND WHAT THAT IS? CAN YOU READ THAT? CAN YOU MAKE THAT OUT?

0218

A. I CAN. IT SAYS "FROM FACTS PUBLISHED IN AUTHORITATIVE MEDICAL JOURNALS. NAMES ON REQUEST."
Q. SO THIS AD WAS TALKING ABOUT IRRITATION?
A. YES.
Q. AND IT WAS SUGGESTING THAT THERE HAD BEEN SOME STUDIES THAT HAD SOMETHING TO SAY ABOUT IRRITATION WITH RESPECT TO THAT BRAND OF CIGARETTES?
A. YES IT. SAYS THAT "THESE STUDIES PROVED CONCLUSIVELY THAT WHEN SMOKING PHILIP MORRIS, THAT THIS IRRITATION CLEARED COMPLETELY OR DEFINITELY IMPROVED."
MR. OHLEMEYER: LET ME HAND YOU WHAT I WANT TO MARK AS DEFENDANT'S NEXT IN ORDER.
THE CLERK: DEFENDANT'S EXHIBIT 2785.
THE COURT: WHAT WAS THAT NUMBER, 2 --
THE CLERK: 2785.
(DOCUMENT MORE PARTICULARLY DESCRIBED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANT'S EXHIBIT # 2785)
THE COURT: DO I HAVE A BINDER?
MR. OHLEMEYER: YES, YOU DO, YOUR HONOR. YOU HAVE A BINDER AND TABS.
THE COURT: THANK YOU. OKAY. YOU CAN PROCEED. THANKS.
MR. OHLEMEYER: Q. AM I CORRECT, DOCTOR, THAT THERE WAS A POINT IN TIME WHERE THE AMERICAN MEDICAL ASSOCIATION PUBLISHED A JOURNAL KNOWN AS JAMA; RIGHT?
A. THEY STILL PUBLISH THAT JOURNAL, YES.

0219

Q. THERE WAS A POINT IN TIME WHERE THAT JOURNAL TOOK ADVERTISEMENTS?
A. DURING THE REIGN OF MORRIS FISHBEIN, YES.
Q. AND THAT INCLUDED ADVERTISEMENTS FOR PRODUCTS LIKE CIGARETTES AND OTHER TOBACCO PRODUCTS?
A. THAT'S CORRECT.
MR. OHLEMEYER: YOUR HONOR, I'D MOVE DEFENDANT'S 2785 INTO EVIDENCE.
MS. CHABER: I WOULD OBJECT, YOUR HONOR, HEARSAY.
THE COURT: I DON'T KNOW WHAT IT'S BEING OFFERED FOR.
MR. OHLEMEYER: CONSUMER EXPECTATIONS, YOUR HONOR.
THE COURT: WELL, THERE IS NO FOUNDATION RIGHT NOW IN THIS RECORD, BUT YOU MAY BE ABLE TO ESTABLISH SOME. WHY DON'T YOU ASK SOME MORE QUESTIONS AND WE'LL SEE WHERE WE ARE.
MR. OHLEMEYER: Q. DR. POLLAY, DOES THIS APPEAR TO BE A COPY OF AN ADVERTISEMENT FOR PHILIP MORRIS BRAND CIGARETTES THAT RAN IN THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION?
A. YES. IN THE UPPER LEFT-HAND CORNER, THAT'S WHAT APPEARS TO BE, THE PUBLISHER'S REFERENCE TO IT BEING

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PUBLISHED IN 1946 IN THIS JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION.

Q. AND YOU HAVE REVIEWED AND ARE FAMILIAR WITH ADVERTISEMENTS FOR PRODUCTS, INCLUDING CIGARETTES, THAT MAY

0220

HAVE APPEARED AT VARIOUS TIMES IN THAT JOURNAL?

A. YES. I'VE LOOKED AT THE ADVERTISING OF CIGARETTES IN THE MEDICAL AND NURSING JOURNALS IN THE '40S AND EARLY '50S, BEFORE THEY WERE BANNED BY THOSE JOURNALS.

MR. OHLEMEYER: I'D OFFER 2785, YOUR HONOR.

MS. CHABER: SAME OBJECTION.

THE COURT: WHAT IS THE OBJECTION, THE LEGAL GROUNDS?

MS. CHABER: THE OBJECTIONS ARE HEARSAY AND RELEVANCE.

THE COURT: RELEVANCE IS OVERRULED.

MR. OHLEMEYER: I'M OFFERING IT AS CONSUMER EXPECTATIONS, NOT TO PROVE THE TRUTH OF ANYTHING ASSERTED IN IT.

MS. CHABER: THEN I THINK THERE'S STILL NO FOUNDATION.

THE COURT: YOU ASKED HIM WHAT THIS APPEARS TO BE AND YOU ASKED HIM WHETHER IT WAS AN AD. ALL WE KNOW IS WHAT IT APPEARS TO BE. THERE IS NO EVIDENCE THAT THIS WAS PUBLISHED ANYWHERE. IF IT WAS AND WE GET SOME EVIDENCE ABOUT THE CIRCULATION OR SOMETHING, I MIGHT LET IT IN. BUT RIGHT NOW, THERE IS NOT ENOUGH IN THIS RECORD. I'M GOING TO SUSTAIN ON THE LACK OF FOUNDATION, WITHOUT PREJUDICE.

MR. OHLEMEYER: Q. DR. POLLAY, THE JAMA FORMAT THAT YOU'RE FAMILIAR WITH INCLUDES THE LETTERS J-A-M-A AND THE DATE ON EACH PAGE IN THE UPPER LEFT-HAND CORNER; ISN'T THAT RIGHT?

A. IT DID IN THOSE DAYS, RIGHT.

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Q. THE PAGE NUMBER ON THE TOP; RIGHT?

A. YES.

Q. AND ON 2785, THE FIRST PAGE HAS A DATE ON IT AND THE SECOND PAGE HAS A DATE ON IT?

A. YES.

Q. THEY APPEAR TO BE -- THEY ARE THE SAME DATE?

A. YES.

Q. IS THIS AN AD -- THAT IS, IS THIS A COPY OF AN AD THAT WOULD HAVE APPEARED IN THIS JOURNAL ON THAT DATE?

A. I WOULD GUESS SO. THE THING THAT CAUSES ME A BIT OF PAUSE IS THE TABLE OF CONTENTS ON THE FRONT HAS PAGE NO. 717 AND THE ITEM FOLLOWING IS FROM A PAGE 39.

Q. DO YOU KNOW WHETHER JAMA NUMBERED THE PAGES OF THE ACTUAL ARTICLES AND MEDICAL PUBLICATIONS DIFFERENTLY THAN THE REST OF THE MAGAZINE?

A. YES. WELL, I GUESS THEY MUST HAVE. HERE IN THE TABLE OF CONTENTS, THERE IS REFERENCE TO "TONICS AND SEDATIVES ADVERTISING, PAGE 38." SO IT DID LOOK LIKE THEY HAD TWO FORMS OF PAGINATION; THAT IS, ONE SET OF PAGES FOR THE ADVERTISING AND ANOTHER SET OF PAGE NUMBERS FOR THE EDITORIAL CONTENT.

Q. AND THIS MAGAZINE WOULD BE PUBLISHED AND SENT TO WHOM OVER THAT PERIOD OF TIME?

A. TO PRACTICING PHYSICIANS, MEMBERS OF THE AMERICAN MEDICAL ASSOCIATION WHO SUBSCRIBED TO THE JOURNAL.

Q. AND DID I UNDERSTAND YOU TO SAY EARLIER IN YOUR TESTIMONY THAT THINGS THAT GET THAT -- THINGS THAT ONE GROUP

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OF PEOPLE MAY READ OR HEAR CAN BE REPEATED TO OTHER GROUPS

0222

OF PEOPLE IN ORDER TO CREATE OR REFLECT CONSUMER EXPECTATIONS?

A. THAT'S CORRECT, THAT THE OPINIONS OF DOCTORS WILL HAVE EFFECTS ON THE OPINIONS OF THEIR PATIENTS.

MR. OHLEMEYER: YOUR HONOR, I'D OFFER 2785.

THE COURT: ANY OBJECTION?

MS. CHABER: NO.

THE COURT: OKAY. 2785 IS RECEIVED.

(DOCUMENT MORE PARTICULARLY DESCRIBED IN THE INDEX RECEIVED IN EVIDENCE AS DEFENDANT'S EXHIBIT # 2785)

MR. OHLEMEYER: Q. WHAT I'D LIKE YOU TO DO, DR. POLLAY, IS HOLD THAT ONE NEXT TO THE ONE YOU HAVE. AND IN THE AD THAT YOU SHOWED US YESTERDAY, THERE'S THE REFERENCE TO THE STUDIES; RIGHT? THERE IS A REFERENCE TO STUDIES?

A. YES.

Q. AND THEN THERE IS A LINE THAT SAYS "IF YOU WANT TO SEE THE RESULTS OF THE STUDIES, WRITE US OR CALL US"?

A. YES.

Q. NOW, IN THE AD, THE 2785 AD --

A. 2785?

Q. THE EXHIBIT IN YOUR RIGHT HAND, THERE IS ALSO --

A. I DON'T UNDERSTAND "2785."

Q. I'M SORRY. THAT'S THE EXHIBIT NUMBER.

A. OKAY.

Q. I HAVE TO DO THAT FOR THE RECORD, BUT IT'S THE AD

0223

IN YOUR RIGHT HAND. THERE'S THE SAME TYPE OF DISCUSSION ABOUT IRRITATION, ISN'T THERE, AND RESEARCH?

A. (EXAMINING) YES.

Q. AND THERE ARE ACTUALLY CITATIONS TO THE MEDICAL JOURNALS WHERE YOU CAN READ ABOUT THAT RESEARCH; RIGHT?

A. YES.

Q. SO AM I CORRECT THAT THE ADVERTISER IS ACTUALLY INVITING OR POINTING TO THE SOURCE OF THE INFORMATION DESCRIBED IN THAT AD WITH RESPECT TO THOSE STUDIES?

A. YES, AS PROVIDING -- THAT'S RIGHT, PROVIDING CITATIONS SO THAT THOSE WHO HAD ACCESS TO A MEDICAL LIBRARY COULD GO AND LOOK IT UP.

Q. AND THE AD IN THE MEDICAL JOURNAL IS SENT TO A DIFFERENT GROUP OF PEOPLE PRESUMABLY THAN THE AD THAT WAS ADMITTED AS 20, TAB 2-B; RIGHT?

A. YES. THIS WAS THE SATURDAY EVENING POST. SO IT WOULD HAVE BEEN IN MASS CIRCULATION COMPARED TO THIS, WHICH WOULD HAVE BEEN PROFESSIONALLY CIRCULATED.

Q. BUT YET IT STILL INVITES PEOPLE TO REQUEST OR OBTAIN THE BACKUP OR THE BASIS FOR THE STATEMENTS IN THE AD?

A. WELL, IN THE FINEST OF PRINT, YES.

Q. AND IN FACT, THERE IS NOTHING INAPPROPRIATE IN TERMS OF CREATING ADVERTISING WITH THAT TECHNIQUE, IS THERE, INVITING PEOPLE TO CALL OR WRITE FOR THE BACKUP, AS IT WERE, OF WHAT YOU'RE SAYING IN THE AD?

A. NO.

Q. IN FACT, THAT'S A COMMON TECHNIQUE USED FOR OTHER PRODUCTS?

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A. FROM TIME TO TIME, SURE.
Q. ALL RIGHT. I'LL TAKE THOSE, DOCTOR.
NOW, I ALSO HAVE A QUESTION ABOUT THESE ADS WE LOOKED AT YESTERDAY. EXHIBIT 19 -- I'M SORRY. I MISIDENTIFIED IT AS 20. IT'S EXHIBIT 19. SOME OF THESE ADS THAT YOU SHOWED US YESTERDAY ON THE SCREEN WERE PUBLISHED AFTER THE SURGEON GENERAL'S WARNING BEGAN APPEARING IN SUCH ADS; ISN'T THAT RIGHT?
A. SOME, YES. THOSE THAT WERE PUBLISHED AFTER 1972.
Q. AND AM I CORRECT THAT IN SOME OF THE ADS YOU SHOWED US, EVEN THOUGH THEY WOULD HAVE BEEN PUBLISHED AFTER 1972, THE WARNINGS MAY NOT HAVE BEEN VISIBLE BECAUSE OF THE WAY YOU COPIED IT OR THE WAY YOU CROPPED THE ADVERTISEMENTS?
A. I DON'T KNOW IF THAT'S THE CASE. I DO KNOW THAT THERE ARE ONE OR TWO OCCASIONS WHERE THE PROCESS OF COPYING AND DUPLICATION HAS CAUSED THE WARNING TO BECOME SO FAINT AS TO BE HARD TO READ. THAT RESULTS LARGELY BECAUSE OF THE NATURE OF THE PHOTOGRAPHY USED IN THE SAME WARNINGS. THE SAME PROCESS THAT AFFECTS ITS POOR LEGIBILITY IMPACTS ITS ABILITY TO BE COPIED.
Q. NOW, YOU HAVE SPENT A FAIR AMOUNT OF TIME, I THINK AS YOU'VE DESCRIBED IT, EXPERT WITNESSING; IS THAT RIGHT?
A. YES.
Q. AND BY THAT, I MEAN TESTIFYING IN LAWSUITS BROUGHT BY PEOPLE AGAINST CIGARETTE COMPANIES?
A. OR AGAINST CIGARETTE COMPANIES BROUGHT BY GOVERNMENTS.

0225

Q. AND ON YOUR RESUME, YOU LIST A SECTION OF WHAT YOU CALL EXPERT WITNESSING; RIGHT?
A. YES.
Q. AND AM I CORRECT THAT YOUR FIRST INVOLVEMENT IN THIS ISSUE OF CIGARETTE ADVERTISING OCCURRED BACK IN THE '80S WHEN SOME LAWYERS GOT YOU INVOLVED IN A CASE IN NEW JERSEY?
A. THAT'S CORRECT.
Q. AND THOSE WERE LAWYERS REPRESENTING THE PLAINTIFF IN THAT CASE?
A. THEY WERE.
Q. AND A CASE BEING BROUGHT AGAINST CIGARETTE COMPANIES?
A. YES.
Q. AND BEFORE THAT TIME, YOU HADN'T TAUGHT ANY CLASS RELATING TO CIGARETTES OR CIGARETTE ADVERTISING; ISN'T THAT RIGHT?
A. MY WORK TO THAT POINT IN TIME HAD BEEN ON THE HISTORY OF ADVERTISING MORE GENERALLY. BECAUSE THE CIGARETTE ADVERTISING IS A VERY PROMINENT PART OF ADVERTISING GENERALLY, I HAD BEEN EXPOSED TO A FAIR AMOUNT OF CIGARETTE ADVERTISING, BUT I HAD NOT DONE A STUDY DEDICATED SOLELY TO THAT INDUSTRY.
Q. YOU HADN'T DONE ANY SPECIFIC RESEARCH OR WRITTEN ANY SPECIFIC ARTICLES ABOUT THE SUBJECT BEFORE THAT TIME?
A. THAT'S CORRECT.
Q. AND SINCE THEN, YOU'VE DONE A FAIR AMOUNT OF EXPERT WITNESSING; RIGHT?

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A. YES, AND WRITTEN ABOUT 100 PAPERS.
Q. YOU TESTIFIED FOR THE PLAINTIFF IN A CASE IN MISSISSIPPI A FEW YEARS AGO?

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A. YES.
Q. AND AGAIN, A FEW YEARS AFTER THAT IN THE EARLY '90S IN ANOTHER CASE IN MISSISSIPPI FOR THE PLAINTIFFS?
A. YES.
Q. YOU WERE HIRED BY ATTORNEYS FOR ANOTHER CASE IN NEW JERSEY TO TESTIFY IN THAT CASE?
A. NO. I WAS DEPOSED IN THAT CASE AND I'VE BEEN DEPOSED FREQUENTLY BY THE INDUSTRY. BUT IF YOU'RE REFERRING TO THE HAINES CASE, THAT NEVER CAME TO TRIAL.
Q. BUT IN THAT CASE, THE LAWYERS REPRESENTING THE PLAINTIFF HIRED YOU TO CONSULT WITH THEM AND TO TESTIFY, IF THE CASE WENT TO TRIAL?
A. THEY LISTED ME. I THINK THEY ANTICIPATED THAT I WOULD PRESENT MUCH THE SAME EVIDENCE THAT HAD BEEN PRESENTED IN THE EARLIER CASE, THE CIPOLLONE CASE.
Q. YOU WERE HIRED BY PLAINTIFFS LAWYERS IN A CASE IN TEXAS?
A. ARE YOU REFERRING TO ALLGOOD CASE?
Q. CORRECT.
A. YES. AGAIN, I NEVER TESTIFIED, BUT I WAS DEPOSED BY THE INDUSTRY FOR SEVERAL DAYS.
Q. WHEN YOU SAY "DEPOSED," YOU MEAN YOUR DEPOSITION WAS TAKEN?
A. THAT'S CORRECT.
Q. AND WHEN YOUR DEPOSITION IS TAKEN IN THOSE TYPES

0227

OF CASES, IS IT YOUR UNDERSTANDING THAT THE RULES REQUIRE THE PARTY TAKING YOUR DEPOSITION TO COMPENSATE YOU FOR YOUR TIME?
A. NOT ME PERSONALLY. THE PROCEDURE I'VE BEEN FOLLOWING THROUGHOUT THIS IS TO ASK FOR DONATIONS TO MY UNIVERSITY.
Q. I WANT TO TALK TO YOU ABOUT THAT. YOU UNDERSTAND THAT THERE ARE TIMES WHEN YOU ARE INVOLVED IN THESE LAWSUITS WHERE THE PEOPLE WHO HAVE HIRED YOU ARE PAYING YOU FOR YOUR TIME AND THERE ARE OTHER TIMES WHERE THE PEOPLE WHO ARE ASKING TO TAKE YOUR DEPOSITION ARE REQUIRED TO PAY FOR YOUR TIME?
A. YES.
Q. AND YOU CHARGE A DIFFERENT RATE, DON'T YOU, WHEN YOU'RE CONSULTING WITH THE PEOPLE WHO HIRE YOU AS OPPOSED TO THE PEOPLE WHO ARE TAKING YOUR DEPOSITION?
A. NO, NOT AS A GENERAL RULE.
Q. IN THE PAST, ISN'T THAT A PRACTICE YOU MAINTAINED?
A. I DON'T -- I DON'T SPECIFICALLY RECALL. I KNOW THE WORK I DID IN ASSISTING THE CANADIAN GOVERNMENT IN REVIEWING THE CORPORATE DOCUMENTS IN ASSOCIATION WITH ITS DEFENSE OF ITS LAW TOOK SEVERAL WEEKS. AND I DON'T RECALL THE SPECIFICS, BUT I THINK THERE WAS SOMETHING LIKE A QUANTITY DISCOUNT; THAT IS, A NEGOTIATED PRICE FOR THE TOTALITY OF THAT WORK.
Q. YOU HAVE BEEN HIRED BY PLAINTIFFS ATTORNEYS IN A CASE IN INDIANA; RIGHT?

0228

A. WELL, I NEVER DID TESTIFY OR DO MUCH IN THAT CASE. I WAS LISTED BY THOSE ATTORNEYS. I TRAVELED TO THE SITE OF THE TRIAL BUT NEVER DID TESTIFY.
Q. YOU WERE HIRED BY ATTORNEYS REPRESENTING THE PLAINTIFF IN A CASE IN KANSAS KNOWN AS THE ROTH CASE?
A. AGAIN, I NEVER TESTIFIED IN THAT CASE, BUT I WAS

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DEPOSED BY THE INDUSTRY.
Q. YOU WERE HIRED BY PLAINTIFFS ATTORNEYS IN A CASE IN NEW YORK KNOWN AS THE SACKMAN CASE?
A. THAT'S THE SAME ATTORNEYS, HUMPHERY, FARRINGTON & MCCLAIN. SO I THINK THEY LISTED ME IN THAT, AND I BELIEVE I WAS DEPOSED BY THE INDUSTRY IN THAT CASE AS WELL.
Q. AND A LAWYER IN FLORIDA NAMED WOODY WILNER HAS HIRED YOU TO CONSULT WITH HIM ON 97 CASES IN WHICH HE'S BEEN A LAWYER FOR THE PLAINTIFF?
A. YES. I'VE TESTIFIED IN MORE THAN ONE CASE FOR WOODY WILNER.
Q. AND THIS GENERATES A SUBSTANTIAL AMOUNT OF MONEY, DOESN'T IT?
A. I'M NOT SURE HOW SUBSTANTIAL IT IS IN TOTAL, BECAUSE IT DOESN'T SHOW UP IN ANY OF MY BANK ACCOUNTS. IT SHOWS UP IN THE UNIVERSITY'S RESEARCH FUNDS AND SCHOLARSHIP FUNDS.
Q. WELL, HAVEN'T YOU DESCRIBED -- LET ME ASK YOU ABOUT THAT FUND. THAT FUND DIDN'T EXIST BEFORE YOU STARTED WHAT YOU'VE DESCRIBED AS THIS EXPERT WITNESSING IN CIGARETTE CASES, DID IT?
A. WELL, THERE WERE -- THERE WERE SOME ACCOUNTS THAT

0229

WERE ACTIVE FOR THE ADMINISTRATIVE EXPENSES AND RESEARCH ACTIVITIES ASSOCIATED WITH THE HISTORICAL RESEARCH THAT PREDATED TOBACCO. BUT THERE HAD NOT BEEN AN ENDOWMENT ACCOUNT. THERE HAD BEEN A CURRENT ACCOUNT, IT'S CALLED, BUT A UNIVERSITY-ADMINISTERED ACCOUNT FOR RESEARCH ACTIVITY.
Q. AND YOU'RE THE ONLY PERSON THAT CONTRIBUTES TO THIS ACCOUNT, THIS FUND?
A. NO, BUT I AM -- I THINK IT'S FAIR TO SAY I'M A PRIMARY CONTRIBUTOR TO IT. BECAUSE IT'S A DEAN'S ACCOUNT, THE DEAN IS ABLE TO CHANNEL WHATEVER FUNDS HE WANTS INTO THIS ACCOUNT. AND THERE MAY BE DONORS WHO WANT TO SUPPORT MARKETING ACTIVITIES WHO CONTRIBUTE THERE, BECAUSE WHEN I RETIRE SHORTLY, THAT'S WHAT ITS USE WILL BE.
Q. AND AM I CORRECT THAT ONE OF THE REASONS YOU SET THE ACCOUNT UP AS OPPOSED TO HAVING THE MONEY PAID TO YOU PERSONALLY WAS SO THAT YOU WON'T HAVE TO PAY THE TAXES IN CANADA ON THE INCOME?
A. WELL, NOT REALLY. IT'S JUST THAT IT GOES MUCH FURTHER TO SUPPORT GRADUATE STUDENTS THAN IT WOULD IF I TOOK IT PERSONALLY. AND OF COURSE IF I DID TAKE IT PERSONALLY, I WOULD PAY INCOME TAXES ON IT.
Q. BUT DO YOU RECALL TELLING LAWYERS WHO HAVE ASKED YOU THAT QUESTION BEFORE THAT ONE OF THE REASONS YOU SET THE FUND UP WAS BECAUSE OF THE CANADIAN TAX RATES?
A. I DON'T RECALL THAT, BUT IT'S NOT INAPPROPRIATE. I MEAN, THE CANADIAN TAX RATES ARE COMPARABLE TO THE U.S. TAX RATES.
Q. YOU'RE CHARGING FOR YOUR TIME HERE TODAY?

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A. WELL, AGAIN, I DON'T CHARGE PERSONALLY, BUT A DONATION TO THE UNIVERSITY WILL BE REQUESTED.
Q. AND THAT DONATION SUPPORTS THE WORK THAT YOU DO AT THE UNIVERSITY ON THIS SUBJECT?
A. IT'S CURRENTLY SUPPORTING DOCTORATE STUDENTS AND RESEARCH EXPENSES ASSOCIATED WITH THEIR AND MY OWN RESEARCH.
Q. ON THIS SUBJECT?
A. PRIMARILY. NOT EXCLUSIVELY. IT'S SUPPORTED OTHER GRADUATE STUDENTS DOING OTHER ACTIVITIES, OTHER

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RESEARCH IN CONSUMER BEHAVIOR.
Q. NOW, IN YOUR OPINION, IT'S REASONABLE FOR MANUFACTURERS TO USE ADVERTISING TO ENCOURAGE CONSUMERS TO PURCHASE THEIR PRODUCT, ISN'T IT?
A. WELL, REASONABLENESS DEPENDS UPON THE REASONABLENESS OF THE PRODUCT AND HOW HONEST OR DECEPTIVE THE ADVERTISING PRACTICES ARE. IT'S VARY HARD TO ANSWER AS A GENERALIZATION.
Q. AM I CORRECT, DOCTOR, THAT YOU USED A WORD YESTERDAY CALLED "CONSUMER EXPECTATIONS"; IS THAT RIGHT?
A. I BELIEVE I RESPONDED TO QUESTIONS THAT USED THAT PHRASE, YES.
Q. ARE YOU FAMILIAR WITH A PHRASE OR A WORD -- TWO WORDS "INFORMATION ENVIRONMENT" (WRITING ON BOARD)?
A. YES.
Q. TELL US WHAT THE INFORMATION ENVIRONMENT IS.
A. IT'S A REFERENCE TO THE KNOWLEDGE THAT'S OUT IN THE PUBLIC DOMAIN THAT MIGHT BE ACCESSIBLE TO PEOPLE IF THEY WERE FULLY INFORMED.

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Q. NOW, AM I CORRECT THAT CONSUMER EXPECTATIONS EITHER ARE CREATED BY OR REFLECT THE INFORMATION IN THAT ENVIRONMENT?
A. WELL, THEY WOULD REFLECT THAT PORTION OF THE INFORMATION ENVIRONMENT THAT THE CONSUMER IS EXPOSED TO. I MEAN, MOST CONSUMERS, OF COURSE, AREN'T SPENDING GREAT VOLUMES OF TIME IN LIBRARIES READING TECHNICAL MATERIALS. SO THERE'S LOTS OF MATERIAL IN AN INFORMATION ENVIRONMENT THAT A TYPICAL CONSUMER IS NOT EXPOSED TO.
Q. BUT BE THAT AS IT MAY, THERE ARE THINGS IN LIBRARY AND TECHNICAL BOOKS THAT FINDS -- THE INFORMATION IN LIBRARIES FROM TECHNICAL BOOKS FINDS ITS WAY INTO THE INFORMATION ENVIRONMENT THROUGH OTHER SOURCES, DOESN'T IT?
A. THAT'S CORRECT. A GOOD EXAMPLE OF THAT NOW WOULD BE THE Y2K PROBLEM WHICH IS BEING TALKED ABOUT QUITE A BIT IN THE PUBLIC.
Q. EVEN THOUGH IT'S VERY TECHNICAL?
A. EVEN THOUGH THAT'S GEAK-SPEAK.
Q. AM I CORRECT THAT ADVERTISING IS ONE CONTRIBUTOR TO THIS ENVIRONMENT?
A. DEFINITELY.
Q. IS IT FAIR TO SAY, DOCTOR, THAT ADVERTISING HAS NO MONOPOLY ON THE INFORMATION ENVIRONMENT OR THAT IT'S NOT THE ONLY CONTRIBUTOR TO THE INFORMATION ENVIRONMENT?
A. IT'S THE PORTION OF THE INFORMATION ENVIRONMENT THAT'S PROFESSIONALLY DESIGNED; THAT IS, WHERE THERE IS THE MOST ATTENTION TO CREATING MESSAGES THAT WILL BE ATTENDED TO, YOU KNOW, SEEN AND HEEDED AND BE CREDIBLE. BUT THE

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OVERALL CONTENT OF MEDIA, NEWS BROADCASTS, EVEN THINGS PERHAPS EXPOSED INCIDENTALLY IN THE PROCESS OF, SAY, WATCHING MOVIES OR TELEVISION COULD BE THOUGHT OF AS PART OF THE INFORMATION ENVIRONMENT.
Q. AND ARE SOME CONTRIBUTORS TO THE ENVIRONMENT MORE FREQUENT THAN OTHERS?
A. I'M NOT SURE WHAT YOU MEAN. YOU HAVE TO CLARIFY THE QUESTION.
Q. LET ME ASK IT THIS WAY. ARE THERE DIFFERENT SOURCES OF INFORMATION THAT CONTRIBUTE TO THIS ENVIRONMENT?
A. COULD YOU CLARIFY WHAT YOU MEAN BY "SOURCES OF INFORMATION." YOU MEAN ADVERTISERS AS OPPOSED TO

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MANUFACTURERS AS OPPOSED TO SCIENTISTS?
Q. WELL, LET ME ASK YOU THIS. IS THE POPULAR PRESS A CONTRIBUTOR TO THE INFORMATION ENVIRONMENT?
A. YES.
Q. WHAT ABOUT EDUCATION, FORMAL EDUCATION?
A. TO SOME EXTENT, YES. TALK SHOWS, ENTERTAINMENT EXPERIENCES LIKE, YOU KNOW, WHAT WE SEE ON TELEVISION OR HEAR ON RADIO AND SO ON.
Q. NOT EVERYTHING ON TELEVISION AND RADIO IS ENTERTAINMENT; RIGHT?
A. THAT'S CORRECT.
Q. SO I'LL SEPARATE THEM. (WRITING ON BOARD).
WHAT ABOUT THE GOVERNMENT? DOES THE GOVERNMENT CONTRIBUTE TO THE INFORMATION ENVIRONMENT?
A. WELL, INDIRECTLY THROUGH THINGS LIKE THE SURGEON GENERAL'S REPORT OR THE LIKE. BUT THAT, LIKE OTHER

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SCIENTIFIC PRODUCTS, ISN'T SOMETHING THAT THE AVERAGE CONSUMER IS LIKELY TO EXPERIENCE DIRECTLY.
Q. WELL, FOR EXAMPLE, WARNINGS ON CIGARETTE PACKAGES ARE SOMETHING THAT CIGARETTE SMOKERS WOULD EXPERIENCE DIRECTLY?
A. YES.
Q. AND WHAT ABOUT, FOR LACK OF A BETTER WORD, POPULAR CULTURE, DOES THAT CONTRIBUTE TO THE INFORMATION ENVIRONMENT?
A. I'M NOT SURE WHAT YOU MEAN BY "POPULAR CULTURE" AS DISTINCT FROM THE ENTERTAINMENT AND POPULAR PRESS AND MATERIALS IN MAGAZINES AND RADIO AND TELEVISION.
Q. HOW ABOUT THINGS LIKE LITERATURE, NOVELS, JOKES, THOSE KINDS OF THINGS, SONGS, MUSIC?
A. IT SEEMS A BIT OF A STRETCH. I DON'T SEE MOST OF THOSE AS BEING VERY INFORMATION LOADED OR INFORMATION RICH. I MEAN, IT MAY BE THAT SOME PEOPLE USE THE TERM THAT WAY.
Q. AM I CORRECT THAT EACH OF THESE THINGS DOESN'T CONTRIBUTE WITH EQUAL FREQUENCY TO THE INFORMATION ENVIRONMENT?
A. OR EQUAL PERSUASIVENESS. THAT IS, SOME OF THESE MATERIALS ARE ACCIDENTAL AND SOME OF THEM ARE VERY INTENTIONAL; THAT IS, THEY'RE DESIGNED WITH PROFESSIONAL COMPETENCY AND EXECUTED WITH BIG BUDGETS.
Q. AND AM I CORRECT THAT FOR ANY GROUP OF PEOPLE, DIFFERENT SOURCES OF INFORMATION MAY BE RECEIVED WITH DIFFERENT LEVELS OF CREDIBILITY?
A. AND DIFFERENT FREQUENCIES AS WELL. TYPICALLY IN

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ADVERTISING, WE VIEW THE PROBLEM AS WHAT ADVERTISING MAY LACK AS A TYPE OF SOURCE ONE MAKES UP FOR IN THE BUDGET YOU USE, REPRESENTATION. IT'S THE WAY TO COMPENSATE FOR ANY TENDENCY PEOPLE MIGHT HAVE TO DISCOUNT A MESSAGE SLIGHTLY BECAUSE IT'S ADVERTISING.
Q. A BRIEF DIGRESSION ON THAT POINT. THE MORE YOU SPEND ON ADVERTISING, THE MORE ADVERTISING YOU GET; RIGHT?
A. THAT'S CORRECT. AND THE MORE APPEALING YOUR PRODUCT BECOMES BECAUSE OF WHAT'S KNOWN AS THE FAMILIARITY EFFECT. THE MORE FREQUENTLY THE CONSUMERS EXPERIENCE A PRODUCT, SEE IT, SEE THE BRAND, THE MORE THEY COME TO TRUST IT.
Q. DO YOU KNOW WHETHER THAT SAME THEORY APPLIES TO THINGS LIKE MEDICAL OR SCIENTIFIC RESEARCH; THAT IS, THE MORE YOU SPEND, THE MORE YOU GET?

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A. WELL, I SUSPECT THAT IT DOES. I MEAN, THERE MAY BE WHAT'S KNOWN AS DECLINING MARGINAL RETURNS. AT SOME POINT, EXPENDITURES AREN'T PRODUCING MUCH IN THE WAY OF ADDITIONAL KNOWLEDGE, BUT MORE ALWAYS SEEMS TO BE A BIT BETTER.

Q. AM I CORRECT, DR. POLLAY, THAT WITH RESPECT TO SMOKING AND HEALTH, THERE ARE A LOT OF THINGS THAT HAVE BEEN ADDED TO THE INFORMATION ENVIRONMENT SINCE 1930?

A. WELL, CERTAINLY THERE HAS BEEN A SERIES OF SURGEON GENERAL'S REPORTS, A SERIES OF STUDIES. IN FACT, I MEAN LITERALLY HUNDREDS AND HUNDREDS OF STUDIES THAT ARE SUMMARIZED IN THE SURGEON GENERAL'S REPORTS THAT HAVE APPEARED ORIGINALLY IN MEDICAL JOURNALS, EPIDEMIOLOGICAL

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JOURNALS, THINGS LIKE THAT.

Q. AND THAT INFORMATION, EVEN THOUGH IT APPEARS IN THOSE TYPES OF SOURCES, GETS REPEATED IN OTHER SOURCES AND THEREBY CONTRIBUTES TO THE INFORMATION ENVIRONMENT?

A. THAT'S NOT MY EXPERIENCE. I THINK VERY RARELY ARE THOSE STUDIES REPEATED. SO I THINK THERE'S NOT MUCH PASS-THROUGH OF THE SCIENCE INTO THE PUBLIC DOMAIN, INTO THE GENERAL MASS MARKET.

Q. WELL, LET'S FOCUS ON SOME POINT IN TIME. LET'S TALK ABOUT THE '50S. WHEN THE EPIDEMIOLOGY EXPERIMENTS THAT YOU TOLD US ABOUT THIS MORNING WERE CONDUCTED AND THE RESULTS WERE PUBLISHED IN MEDICAL JOURNALS, THAT ASSOCIATED CIGARETTE SMOKING WITH LUNG CANCER?

A. I HESITATE, BECAUSE I'M NOT FAMILIAR WITH THE PHRASE "EPIDEMIOLOGICAL EXPERIMENTS." EPIDEMIOLOGIC STUDIES LOOK AT THE HISTORY OF COMPARATIVE COHORTS; THAT IS, SMOKERS AND NONSMOKERS WHO ARE MATCHED ON VARIOUS CHARACTERISTICS. IT'S NOT AN EXPERIMENT IN THE SENSE THAT YOU'RE INDUCING SOMEONE TO SMOKE AND THEN TRACKING THE CONSEQUENCES OF THAT SMOKING.

Q. I'M SORRY. A POOR CHOICE OF WORDS ON MY PART.

THE STUDIES THAT WERE BEING DONE IN THE '50S USING EPIDEMIOLOGY TECHNIQUES WITH RESPECT TO SMOKING AND HEALTH WERE CONDUCTED BY MEDICAL AND SCIENTIFIC PEOPLE; RIGHT?

A. YES.

Q. THE RESULTS OF THOSE STUDIES WERE PUBLISHED IN MEDICAL AND SCIENTIFIC JOURNALS; RIGHT?

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A. YES.

Q. AND THEN THE POPULAR PRESS REPORTED THE FACT OF THOSE STUDIES AND IN SOME MEASURE DESCRIBED THEM IN A WAY THAT CONTRIBUTED INFORMATION TO THIS ENVIRONMENT?

A. SOME OF THE POPULAR PRESS. WE MENTIONED READER'S DIGEST, BECAUSE IT DIDN'T CARRY ADVERTISING. AND THEN SOME OF THE MORE PROMINENT NEWS ORGANIZATIONS, LIKE THE NEW YORK TIMES AT THE TIME WAS CARRYING A NUMBER OF STORIES.

Q. AND THERE WERE MAGAZINE ARTICLES IN OTHER MAGAZINES, LIKE POPULAR MAGAZINES, TIME, NEWSWEEK?

A. WELL, MOSTLY IN THE NEWS MAGAZINES, THE U.S. NEWS AND WORLD REPORT, BUSINESS WEEK, THINGS LIKE THAT. LESS SO IN THE COLLIERS, SATURDAY EVENING POST, LIFE THOSE KINDS OF MAGAZINES.

Q. NOW, AM I CORRECT THAT THE ONLY PART OF THE INFORMATION ENVIRONMENT THAT YOU HAVE REALLY FOCUSED ON IS ADVERTISING?

A. NO, THAT'S NOT TRUE. WE'VE TALKED AT GREAT

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LENGTH THIS MORNING ABOUT THE ENTIRE PUBLIC RELATIONS EFFORTS, WHICH IS ESSENTIALLY TRYING TO INFLUENCE VIRTUALLY EVERYTHING ELSE; THAT IS ALL OF THAT WHICH IS APPEARING IN RADIO, TELEVISION AND MAGAZINES, NEWSPAPERS. AND THEN WE ALSO TALKED YESTERDAY A BIT ABOUT SMOKING IN THE MOVIES AND THE INDUSTRY'S EFFORTS THERE.

Q. IS IT FAIR TO SAY, DR. POLLAY, THAT EVEN THOUGH ONE ASPECT OR ONE SOURCE OF INFORMATION MAY BE GIVING -- MAY BE CONTRIBUTING INFORMATION OF ONE TYPE TO THE ENVIRONMENT, INFORMATION FROM OTHER SOURCES MAY BE CONTRIBUTING

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INFORMATION THAT EITHER CONTRADICTS OR OPPOSES THAT INFORMATION?

A. IT TENDS TO BE IN DIFFERENT SOURCES. THAT IS, IF YOU HAVE, SAY, CIGARETTE ADVERTISING ON TELEVISION NETWORKS AND TELEVISION SHOWS, YOU ARE MOST UNLIKELY TO SEE INFORMATION ON THOSE NETWORKS OR SHOWS CONTRADICTING THAT ADVERTISING BECAUSE TO DO SO WOULD PUT THAT ADVERTISING IN JEOPARDY.

Q. ARE YOU FAMILIAR WITH OR HAVE YOU REVIEWED OR CONDUCTED ANY RESEARCH THAT KIND OF RANKS THESE SOURCES AS TO HOW CREDIBLE THEY ARE, HOW THE CONSUMER PERCEIVES THE CREDIBILITY OF THE SOURCE?

A. NO, I HAVE NOT.

Q. SO DIFFERENT SOURCES OF INFORMATION MAY HAVE MORE OR LESS CREDIBILITY THAN OTHERS?

A. YES. AS WE MENTIONED THIS MORNING, YOU KNOW, THAT A DOCTOR MIGHT BE MORE CREDIBLE THAN A NEIGHBOR ON SOME MEDICAL POINT. OR SHOULD THE INDUSTRY ADMIT TO THE CANCER CAUSATION, THAT WOULD HAVE MORE CREDIBILITY THAN SOME TALK SHOW HOST ALLEGING THAT.

Q. BY LIKE TOKEN AND FOR THE SAME REASONS, THE FACT THAT PEOPLE KNOW THAT ADVERTISING IS DESIGNED TO ENCOURAGE THEM TO BUY A PRODUCT AFFECTS THE CREDIBILITY OF THAT SOURCE OF INFORMATION, DOESN'T IT?

A. TO A SURPRISINGLY MODEST EXTENT. I MEAN, IF YOU ASK PEOPLE THAT QUESTION DIRECTLY, THEY WILL OF COURSE SAY THAT THEY RECOGNIZE THE PURPOSES OF ADVERTISING AND DISCOUNT IT. BUT MOST ADVERTISING IS DESIGNED TO -- WHAT WE CALL IN

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THE TRADE TO MINIMIZE COUNTER-ARGUMENTATION. THAT IS, YOU TRY NOT TO PRESENT ARGUMENTS IN SUCH A WAY THAT PEOPLE ARGUE BACK AT THE AD. YOU WANT THE AD TO BE CREDIBLE AS EXPERIENCED.

Q. IS THERE ANY QUESTION IN YOUR MIND THAT WHEN SOMEBODY SEES AN ADVERTISEMENT FOR MARLBORO CIGARETTES, THEY KNOW IT IS AN AD DESIGNED AND PAID FOR BY PHILIP MORRIS TO ENCOURAGE THEM TO BUY MARLBORO CIGARETTES?

A. I HAVE NO QUESTION ABOUT THAT, IF THEY STOP TO THINK ABOUT IT. BUT TYPICALLY, MARLBORO ADS ARE DESIGNED SO PEOPLE DON'T STOP TO THINK ABOUT IT. THAT IS, THEY ARE EXPERIENCING IMAGE AND THE ASSOCIATION OF THE BRAND. AND THAT'S BECAUSE THE ADVERTISING FUNCTIONS ON AN IMAGE BASE AND SAYS THERE'S NO ASSERTIONS TO CHALLENGE THE CREDIBILITY.

Q. IS IT FAIR TO ADD WORD OF MOUTH AND FRIENDS AND NEIGHBORS TO CONTRIBUTORS OR SOURCES OF INFORMATION IN THIS ENVIRONMENT?

A. WELL, I'M NOT SURE IT'S A SEPARATE SOURCE. I MEAN, THERE MIGHT BE WAYS IN WHICH INFORMATION FROM ONE SOURCE GETS PASSED ALONG AND SO IT'S A WAY IN WHICH THE INFORMATION ENVIRONMENT GETS STIRRED UP, I SUPPOSE.

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Q. IT'S A WAY IN WHICH INFORMATION IS SPREAD AMONG A WIDER NUMBER OF PEOPLE?
A. YES.
Q. IS IT A WAY, THAT IS A METHOD OF MAKING INFORMATION MORE COMMON THAN IT MIGHT BE IF IT ONLY APPEARED IN ONE SOURCE?
A. WELL, IT'S CERTAINLY A METHOD, AS YOU DESCRIBED

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IT, WHEN ADS ARE DESIGNED TO ENCOURAGE WORD OF MOUTH, AS SOME ARE, OR WHEN THE NATURE OF THE ADVERTISING IS SUFFICIENTLY CONTROVERSIAL OR UNIQUE THAT WORD OF MOUTH HAPPENS. AND THERE HAVE BEEN MANY CAMPAIGNS WHICH RELY UPON THAT; THAT IS, DOING SOMETHING NOT WORTHY IN ORDER TO GET WORD OF MOUTH.
Q. BUT THAT'S NOT LIMITED -- THAT PHENOMENON IS NOT LIMITED TO ADVERTISING, IS IT?
A. WELL --
Q. I MEAN, THINGS -- I DON'T MEAN TO INTERRUPT YOU. I'LL LET YOU ANSWER THE QUESTION. THINGS THAT PEOPLE READ IN THE POPULAR PRESS OR SEE ON TELEVISION OR HEAR FROM THE GOVERNMENT GET PASSED AMONG GROUPS OF PEOPLE BY WORD OF MOUTH, DON'T THEY?
A. TO SOME EXTENT. I THINK THE MORE VIVID THE ORIGINAL EXPERIENCE, THE MORE MEMORABLE, THE MORE LIKELY IT IS TO BE RECALLED, SAY, THE NEXT DAY AND THEN GET TALKED ABOUT WITH NEIGHBORS OR PEOPLE AT WORK AND SO ON. SO IT WOULD DEPEND UPON THE VIVIDNESS OF THE COMMUNICATION OR THE COMMUNICATION'S EXPERIENCE.
Q. NOW, WITH RESPECT TO SMOKING AND HEALTH, AM I CORRECT THAT ANOTHER CONTRIBUTION TO THIS INFORMATION ENVIRONMENT IS PUBLIC HEALTH ORGANIZATIONS AND PUBLIC SERVICE ANNOUNCEMENTS ABOUT SMOKING AND HEALTH?
A. TO QUITE A MINOR DEGREE. AS WE NOTICED EARLIER TODAY, THE PUBLIC HEALTH MESSAGES ARE A DROP IN THE BUCKET HERE. IN THE TIME WE LOOKED AT, THERE WERE SOME THREE MESSAGES COMPARED TO THE DOZENS AND DOZENS OF MESSAGES FOR

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THE INDUSTRY.
IN MORE RECENT TIMES, THE AMOUNT OF PUBLIC SERVICE ANNOUNCEMENT TIME AVAILABLE FOR TOBACCO CONTROL HAS BEEN EQUIVALENT OF A DAY OR TWOS' SPENDING BY THE INDUSTRY IN PROMOTING CIGARETTES.
Q. LET ME TAKE IT A STEP AT A TIME. YOU SAID "THE TIME WE LOOKED AT THIS MORNING." YOU WERE TALKING THIS MORNING ABOUT 1954, '55; RIGHT?
A. THAT'S CORRECT.
Q. NOW, THROUGHOUT THAT -- THROUGHOUT THE PERIOD OF TIME SINCE THEN, THERE HAVE BEEN AN INCREASING NUMBER OF PUBLIC HEALTH ORGANIZATIONS AND PRIVATE ORGANIZATIONS THAT HAVE CONTRIBUTED INFORMATION TO THIS ENVIRONMENT ABOUT SMOKING AND THE RISKS ASSOCIATED WITH SMOKING; ISN'T THAT RIGHT?
A. WELL, I DON'T THINK IT'S BEEN INCREASING ON A CONSISTENT BASE. IT'S BEEN A BIT OF EBB AND FLOW. THERE WAS ONE PEAK IN THE LATE 1960S WHEN THE FEDERAL COMMUNICATION COMMISSION MANDATED THAT NETWORKS AND RADIO STATIONS GIVE FREE AIR TIME TO ORGANIZATIONS LIKE THE CANCER SOCIETY AND THE HEART ASSOCIATION. SO IN THOSE DAYS, THERE WERE SUDDENLY A LARGE NUMBER OF SUCH PUBLIC SAFETY ANNOUNCEMENTS.
BUT EVEN AT THAT PEAK, THOSE ANNOUNCEMENTS WERE

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ONLY REACHING ONE-SEVENTEENTH OF THE AUDIENCE THAT THE CIGARETTE ADVERTISING WAS REACHING.

Q. WHAT PERIOD OF TIME WAS THAT?

A. A SHORT WINDOW OF TIME, ABOUT 1968, '69. AS I

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SAID, THE INDUSTRY SHORTLY THEREAFTER LEFT RADIO AND TV, ESCAPING THAT.

Q. WOULD YOU DESCRIBE THOSE MESSAGES AS ANTI-SMOKING MESSAGES?

A. YES. THEY WERE FAIRLY EXPLICIT IN THAT THEY WOULD HAVE THINGS LIKE COWBOYS COUGHING INSTEAD OF ENJOYING THEIR CIGARETTES.

Q. ISN'T IT A FACT, DR. POLLAY, THAT CONSUMERS ATTACH MORE CREDIBILITY TO ANTI-SMOKING MESSAGES THAN THEY DO TO CIGARETTE ADVERTISEMENTS?

MS. CHABER: VAGUE AS TO TIME, YOUR HONOR.

THE COURT: YOU MEAN IN GENERAL OR AS TO A SPECIFIC TIME?

MR. OHLEMEYER: IN GENERAL.

THE COURT: I WILL ALLOW IT. IF IT'S DIFFERENT FOR DIFFERENT PERIODS OF TIME, YOU CAN TELL US. IF IT'S THE SAME, YOU CAN TELL US THAT.

THE WITNESS: I'M NOT -- I CERTAINTY DON'T HAVE A RECOLLECTION OF A STUDY TO THAT EFFECT. THAT IS CONSISTENT WITH MY OWN OPINION, THAT THEY DO, IN PART BECAUSE THEY RECOGNIZE THAT MOST PUBLIC SERVICE ANNOUNCEMENTS COME FROM PEOPLE WHOSE MOTIVATIONS ARE THE PUBLIC HEALTH RATHER THAN JUST THEIR PERSONAL PROFIT MOTIVATION.

MR. OHLEMEYER: Q. SO IN YOUR OPINION, CONSUMERS TEND TO ATTACH MORE CREDIBILITY TO THE ANTI-SMOKING MESSAGES THAN TO CIGARETTE ADVERTISEMENTS?

A. YES, WHICH IS PART OF THE REASON WHY THE

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CIGARETTE INDUSTRY SPENDS SO HEAVILY IN RESPONSE TO THE PRESENCE OF THAT KIND OF STUFF.

MR. OHLEMEYER: YOUR HONOR, I MOVE TO STRIKE EVERYTHING AFTER "YES" AS NONRESPONSIVE.

THE COURT: I WILL STRIKE EVERYTHING AFTER THE ANSWER "YES," AND DIRECT THE WITNESS PLEASE RESPOND TO THE QUESTION. YOU ARE ENTITLED TO AND SHOULD GIVE A FULL AND FAIR ANSWER TO THE QUESTION, BUT YOU OUGHT NOT TO GO BEYOND THE FAIR BOUNDS OF THE QUESTION.

I'M GOING LEAVE IN THE WORD "YES," AND STRIKE THE BALANCE AS BEING NOT RESPONSIVE.

MR. OHLEMEYER: Q. NOW, DR. POLLAY, ARE YOU ALSO FAMILIAR WITH STUDIES THAT INDICATE THAT CIGARETTE ADVERTISEMENTS ARE PERCEIVED BY TEENAGERS AS HYPOCRITICAL AND LISTED AS LEAST LIKED WHILE ANTI-SMOKING ADS ARE PERCEIVED AS STRAIGHTFORWARD AND TEND TO BE LIKED BY THOSE PEOPLE?

A. I DON'T RECALL THE SPECIFICS OF WHICH STUDIES AND WHICH DATES, BUT I DO KNOW THAT FROM TIME TO TIME THAT HAS BEEN A FINDING.

Q. INCLUDING THE -- WELL, STRIKE THAT.

NOW, WHAT ROLE CAN SURVEYS OR POLLS PLAY IN GAUGING CONSUMER EXPECTATIONS?

A. THEY CAN INDICATE THE FRACTION OF THE POPULATION THAT HOLDS VARIOUS BELIEFS.

Q. AND ARE YOU AWARE THAT POLLS CONDUCTED BY -- STRIKE THAT.

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28 ARE THERE A SMALL NUMBER OF ORGANIZATIONS IN THIS

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COUNTRY THAT HAVE CONDUCTED POLLS OVER THE YEARS OR IS IT SOMETHING --
A. IT IS ACTUALLY A VERY LARGE INDUSTRY. SO THERE ARE A LARGE NUMBER OF PEOPLE THAT DO IT. MOST ADVERTISING AGENCIES HAVE THE CAPACITIES TO CONDUCT POLLS. MANY RESEARCHERS AT UNIVERSITIES CONDUCT POLLS. BUT THERE ARE A FEW PROMINENT NATIONAL ORGANIZATIONS, LIKE ROPER AND GALLUP, THAT HAVE BEEN DOING MAJOR POLLING, PARTICULARLY FOR THE NATIONAL POLITICAL PARTIES AND THE NATIONAL ADVERTISING ACCOUNTS.
Q. AND THOSE ORGANIZATIONS, GALLUP AND OTHERS, CONDUCTED POLLS IN THE 1950S ON THE ISSUE OF SMOKING AND HEALTH, DIDN'T THEY?
A. THAT THEY DID. IN FACT, THEY ARE PART OF WHAT'S KNOWN AS TRACKING STUDIES. SO THE POLLS ARE CONDUCTED AT MANY DIFFERENT POINTS IN TIME ASKING THE SAME OR SIMILAR QUESTIONS.
Q. AND BASED IN PART UPON YOUR REVIEW OF THOSE POLLS, YOU WOULD AGREE, WOULDN'T YOU, THAT IN THE '50S THE PUBLIC WAS BECOMING AWARE THAT THERE WERE RISKS ASSOCIATED WITH SMOKING, INCLUDING THE RISK OF DEVELOPING CANCER?
A. WELL, BECOMING AWARE, BECAUSE THERE HAD BEEN SO LITTLE AWARENESS. I THINK IT'S FAIR TO SAY THAT THERE WAS SOME GROWING AWARENESS, BUT THE LEVEL OF IT DURING THE 1950S WAS MODEST. THAT IN TERMS OF BELIEF, THERE HAD BEEN, AS WE TALKED ABOUT EARLIER, A FAIR FRACTION OF PEOPLE WHO HAD HEARD ALLEGATIONS, BUT A MUCH SMALLER FRACTION WHO BELIEVED THOSE.

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Q. BUT AM I CORRECT THAT IN YOUR OPINION, IT WOULD BE DIFFICULT TO ASSUME THAT SOMEONE COULD GROW UP IN THE 1950S AND NOT HAVE BEEN AWARE OF THE HEALTH EFFECTS ASSOCIATED WITH CIGARETTE SMOKE?
A. WELL, YOU WOULDN'T HAVE -- YOU WOULDN'T HAVE GOOD KNOWLEDGE. I GREW UP IN THE 1950S AND WE HEARD THINGS LIKE IT STUNTED YOUR GROWTH, BUT THAT DOESN'T SEEM TO BE FACT. SO THERE'S A VARIETY OF ALLEGATIONS ONE WOULD HAVE HEARD.
BUT WHETHER YOU HAD KNOWLEDGE ABOUT THE TRUTH OF THE MATTER OR THE SCIENTIFIC CONCLUSIVENESS OF THE MATTER IS, I THINK, QUITE ENTIRELY DIFFERENT.
Q. BUT BE THAT AS IT MAY, DOCTOR, IT'S DIFFICULT TO ASSUME THAT SOMEONE WHO WOULD HAVE GROWN UP IN THE '50S WOULD NOT HAVE BEEN AWARE THAT THERE WERE HEALTH EFFECTS ASSOCIATED WITH CIGARETTE SMOKING?
A. WELL, IF STATED IN THE MOST GENERAL TERMS, I THINK THAT'S CORRECT. BUT THE HEALTH EFFECTS THERE MIGHT BE SPECIFIC TO THROAT IRRITATIONS AND MIGHT WELL NOT INCLUDE SOMETHING AS SERIOUS AS BELIEVING THAT ONE RAN THE RISK OF GETTING CANCER.
Q. DOCTOR, IN THE 1950S, THE EXPECTATIONS OF THE ORDINARY CONSUMER INCLUDED AN AWARENESS OF THE REPORTS THAT LINKED SMOKING AND LUNG CANCER; RIGHT?
A. I THINK, AS WE'VE SAID BEFORE UNDER THE DIRECT TESTIMONY, THAT IN THAT PERIOD MORE THAN HALF OF THE PEOPLE BY THE MID-'50S AT LEAST HAD HEARD OF THE ALLEGATIONS, EVEN THOUGH I THINK LESS THAN 10 PERCENT HAD THE BELIEFS.
Q. MY QUESTION, DOCTOR, IS IN THE 1950S, DID THE

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EXPECTATIONS OF THE ORDINARY CONSUMER INCLUDE AN AWARENESS OF THE REPORTS LINKING CIGARETTE SMOKING TO LUNG CANCER?

A. I BELIEVE YOU'VE ASKED THAT SEVERAL TIMES AND I HAVE TRIED TO ANSWER IT SEVERAL TIMES. I'M NOT CLEAR WHAT YOU STILL NEED.

Q. IS THE ANSWER YES?

MS. CHABER: I WOULD OBJECT, YOUR HONOR.

THE COURT: OVERRULED. I'M DIRECTING YOU TO ANSWER THAT QUESTION.

THE WITNESS: CAN I HAVE THE QUESTION BACK?

THE COURT: YES.

THE WITNESS: IT STILL SOUNDS LIKE THE SAME QUESTION.

THE COURT: YOU CAN HAVE IT BACK. THEN YOU NEED TO ANSWER IT, AFTER YOU HAVE HEARD IT.

MR. OHLEMEYER: Q. IN THE 1950S, THE EXPECTATIONS OF THE ORDINARY CONSUMER INCLUDED AN AWARENESS OF THE REPORTS ASSOCIATING OR LINKING CIGARETTE SMOKING AND LUNG CANCER?

A. YES. BY THE MIDDLE OF THE 1950S, I THINK IT'S FAIR TO SAY THAT A MAJORITY OF PEOPLE HAD HEARD OF THE ALLEGATIONS; THAT IS, WERE AWARE THAT THERE WERE ALLEGATIONS, EVEN THOUGH A SMALL FRACTION OF THOSE BELIEVED THEM.

Q. AND I CORRECT THAT BY 1964, A GOVERNMENT SURVEY HAD DETERMINED THAT 81 PERCENT OF ALL ADULTS HAD NOT JUST HEARD BUT AGREED THAT CIGARETTE SMOKING WAS HARMFUL TO HEALTH?

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A. YOU'D HAVE TO SHOW ME THAT. BUT "HARMFUL" THERE IS QUITE VAGUE. OF COURSE, WE'RE NOT CLEAR WHAT THE HARM IS.

Q. LET ME SHOW YOU, DOCTOR, A PORTION OF THE 1989 SURGEON GENERAL'S REPORT. I'M GOING TO HAND YOU, DOCTOR, THE 1989 SURGEON GENERAL'S REPORT AND DIRECT YOUR ATTENTION TO PAGE 180. TABLE 2.

THE COURT: YOU NEED TO DO ONE OF TWO THINGS. YOU EITHER NEED TO GET MS. CHABER'S OKAY THAT WE DON'T HAVE TO MARK IT OR WE NEED TO MARK IT.

MS. CHABER: YOUR HONOR, I THOUGHT WE HAD AN AGREEMENT THAT AT THE END WE WERE GOING TO MARK ALL THE PORTIONS OF THE VARIOUS SURGEON GENERAL'S REPORTS. THAT HAD BEEN OUR AGREEMENT.

THE COURT: THAT'S FINE. THAT SLIPPED MY MIND. THANK YOU.

MR. OHLEMEYER: Q. I HAND THAT TO YOU, DOCTOR. I APOLOGIZE. THE BOOK IS FALLING APART. AND MY QUESTION IS AM I CORRECT THAT A 1964 GOVERNMENT SURVEY FOUND THAT 81 PERCENT OF ALL ADULTS AGREED -- HAD NOT JUST HEARD BUT AGREED THAT CIGARETTE SMOKING COULD BE HARMFUL TO HEALTH?

A. YES. AS I POINTED OUT, IT'S NOT CLEAR IN EITHER THE QUESTION NOR THE PRESENTATION HERE WHAT THAT HARM MIGHT BE.

Q. OKAY. THANK YOU.

NOW, WITH RESPECT TO CULTURE, WE TALKED A LITTLE BIT ABOUT POPULAR CULTURE. ARE SLANG TERMS A REFLECTION OF

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COMMON KNOWLEDGE OR CONSUMER EXPECTATIONS ABOUT THINGS?

A. WELL, I GUESS. I MEAN, I WOULDN'T CALL THEM INFORMATION IN THE SENSE OF THE WAY YOU WERE DISCUSSING THE

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INFORMATION ENVIRONMENT.
Q. WELL, IT'S A METHOD BY WHICH PEOPLE COMMUNICATE EXPECTATIONS OR COMMON KNOWLEDGE USING SLANG OR SHORTHAND?
A. OR COMMUNICATE STEREOTYPES, VERBAL SHORTHAND.
Q. FOR EXAMPLE, YOU'RE FAMILIAR WITH THE TERMS CANCER STICK AND COFFIN NAIL AS THEY RELATE TO CIGARETTES AND CIGARETTE SMOKING?
A. YES.
Q. THOSE WORDS HAVE BEEN USED TO DESCRIBE CIGARETTES AND THE PRACTICE OF SMOKING FOR SOME TIME, HAVEN'T THEY?
A. PERHAPS. I KNOW THE TERMS ARE OLD TERMS. I DON'T KNOW WITH WHAT FREQUENCY THEY'RE USED AND IN WHAT STRAIT OF SOCIETY THEY'RE USED.
Q. WHEN YOU SAY "OLD TERMS," WHAT DO YOU MEAN BY THAT?
A. I THINK THE TERMS GO BACK TO THE DAYS WHEN THERE WERE PROHIBITION EFFORTS AGAINST TOBACCO.
Q. WHEN WOULD THAT HAVE BEEN?
A. EVEN BACK INTO THE 19TH CENTURY. CERTAINLY THE EARLY PART OF THE 20TH CENTURY.
Q. THAT WOULD BE THE LATE 1800S, THE EARLY 1900S?
A. YES.
Q. HAVE YOU MADE ANY STUDY OF CALIFORNIA, SPECIFIC CONTRIBUTIONS TO THE INFORMATION ENVIRONMENT ABOUT SMOKING AND HEALTH IN THIS STATE?

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A. I REVIEWED THE EIGHT BOXES OF MATERIAL THAT MR. PARRISH PROVIDED.
Q. OKAY. AND THAT INCLUDES INFORMATION ABOUT LESTER BRESLOW AND THE CALIFORNIA STATE DEPARTMENT OF PUBLIC HEALTH?
A. IT INCLUDES A LOT OF OFFICIAL GOVERNMENT-TYPE DOCUMENTS, ARCHIVAL MATERIALS, PUBLICATIONS FROM 19 CENTURY PUBLICATIONS FROM NEW YORK AND NEW ORLEANS AND WASHINGTON, D.C. QUITE A BROAD RANGE OF STUFF, ONLY A SMALL FRACTION OF WHICH WAS CALIFORNIA-SPECIFIC.
Q. ARE THERE STATE-SPECIFIC CONTRIBUTIONS -- LET ME BACK UP.
WHEN WE TALK ABOUT THE INFORMATION ENVIRONMENT, CAN WE BREAK IT DOWN BY GEOGRAPHY?
A. YOU COULD. I MEAN, THERE'S CERTAINLY SOME THINGS THAT WOULD BE COMMON ON A NATIONAL BASIS AS A RESULT OF SHARING NATIONAL MEDIA, LIKE TELEVISION NETWORKS AND THE LIKE, NATIONAL MAGAZINES. THEN THERE MIGHT BE SPECIFICS. YOU KNOW, SOME NEWSPAPERS IN SOME COMMUNITIES MIGHT HAVE A PARTICULAR CAMPAIGN, SO THEY COVERED A TOPIC IN GREAT DETAIL.
Q. SO THERE COULD BE EITHER STATE OR LOCAL-SPECIFIC CONTRIBUTIONS TO THE INFORMATION ENVIRONMENT ON A SMALLER SCALE THAN NATIONAL?
A. THERE COULD BE AND THAT INFORMATION MIGHT FINE TUNE AND CAUSE YOU TO ADJUST FROM A NATIONAL BASIS.
Q. YOU'RE FAMILIAR WITH READER'S DIGEST. YOU'VE TOLD US ABOUT THAT ALREADY; RIGHT?

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A. YES.
Q. AND WITH SOMETHING CALLED CONSUMER REPORTS?
A. YES.
Q. I GUESS THE WORD "POPULAR" IS NOT THE RIGHT WORD, BUT WHAT WAS THE CIRCULATION OF THE READER'S DIGEST, YOU KNOW, DURING THE '50S AND THE '60S IN THIS COUNTRY?

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A. I DON'T RECALL IN THE COUNTRY, BUT IT HAD AN INTERNATIONAL CIRCULATION AND WAS TRANSLATED INTO SEVERAL LANGUAGES WHEN THAT WAS TRUE FOR VERY FEW MAGAZINES.

Q. WAS IT ONE OF THE MOST, I GUESS, WIDELY DISTRIBUTED OR FREQUENTLY PUBLISHED MAGAZINES IN THIS COUNTRY DURING THAT TIME PERIOD?

A. I THINK IT WAS ON THE TOP 10 LIST. I THINK IT WAS ONE OF THE 10 MOST WIDELY CIRCULATED MAGAZINES.

BECAUSE THE SCIENTIFIC ADVISORY BOARD, AT LEAST SOME MEMBERS OF IT, WERE ANNOUNCED IN LATE APRIL OF '54, A COUPLE OF MONTHS BEFORE LITTLE'S ANNOUNCEMENT WAS MADE. SO HE MAY HAVE APPOINTED SOME ADDITIONAL MEMBERS OR SUBSEQUENT MEMBERS, BUT THE INITIAL MEMBERSHIP WAS AT LEAST IN PART SOMETHING THAT WAS THERE WHEN HE TOOK OFFICE.

Q. AND THIS ORGANIZATION WAS DESIGNED TO DO TWO THINGS, SPONSOR RESEARCH AND PERFORM A PUBLIC RELATIONS FUNCTION; RIGHT?

A. YES, IN THE REVERSE ORDER.

Q. AND WHAT THIS ORGANIZATION (INDICATING) DID AND HAS DONE IS SPONSOR THE RESEARCH AND THIS ORGANIZATION BECAME THE PUBLIC RELATIONS PART OF THIS GROUP; RIGHT?

A. TO SOME EXTENT, ALTHOUGH THE COUNCIL FOR TOBACCO RESEARCH CONTINUED SOME OF THE KIND OF PUBLIC RELATIONS ACTIVITY; THAT IS, MAKING SURE THAT RESEARCH WHICH WAS FRIENDLY TO THE INDUSTRY'S INTERESTS GOT EXPOSURE AND

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PUBLICITY.

Q. YOU ARE NOT TELLING US THAT THIS ORGANIZATION (INDICATING) AND WHAT BECAME THIS ORGANIZATION, THE COUNCIL FOR TOBACCO RESEARCH, WAS ONLY SPONSORING OR FUNDING PEOPLE TO DO I THINK WHAT YOU JUST SAID WAS FRIENDLY RESEARCH?

A. NO. BUT THE STUDIES THAT I'VE SEEN INDICATE THAT VERY LITTLE OF THEIR RESEARCH WAS DIRECTLY ON THE CIGARETTE-CANCER LINK, THAT IT WAS -- MOST OF IT WAS PERIPHERAL TO THAT CENTRAL QUESTION. AND THAT INDEED MOST OF THE PEOPLE THEY FUNDED ACCEPTED THE CIGARETTE-CANCER LINK.

Q. WELL, DOCTOR, YOU'D HAVE TO HAVE MEDICAL AND SCIENTIFIC BACKGROUND TO DECIDE WHETHER THE RESEARCH FUNDED BY THIS ORGANIZATION WAS RELATED TO AS OPPOSED TO PERIPHERAL TO THE ISSUE OF CANCER AND SMOKING, WOULDN'T YOU?

A. ON THAT SCORE, I'M RELYING UPON WHAT I HAVE SEEN IN PLACES LIKE THE SURGEON GENERAL'S REPORTS OR SCHOLARLY DISCUSSIONS OF THIS.

Q. DO YOU KNOW HOW MANY TIMES THE SURGEON GENERAL HAS REFERRED TO OR CITED AS A SOURCE FOR INFORMATION IN THE SURGEON GENERAL'S REPORT RESEARCH SPONSORED BY THIS ORGANIZATION, THE COUNCIL FOR TOBACCO RESEARCH?

A. NO, BUT I WOULD IMAGINE A LOT. BECAUSE OVER THE YEARS, THEY'VE SPREAD THEIR MONEY OUT QUITE THINLY, SO THAT THEY'VE GOTTEN INVOLVED IN MANY, MANY RESEARCH PROJECTS FOR MANY, MANY PEOPLE AND MANY INSTITUTIONS.

Q. DO YOU KNOW HOW MANY SCIENTISTS OR ORGANIZATIONS THAT HAVE RECEIVED FUNDING FROM THIS ORGANIZATION

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(INDICATING), THE COUNCIL FOR TOBACCO RESEARCH, HAVE BEEN NOBEL PRIZE WINNERS?

A. NO.

Q. AM I CORRECT, DR. POLLAY, THAT THE ORIGIN AND PURPOSE OF THIS ORGANIZATION (INDICATING), THE TOBACCO

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INDUSTRY RESEARCH COMMITTEE, WAS DESCRIBED TO THE JUSTICE DEPARTMENT AND THE UNITED STATES GOVERNMENT AT THE TIME THIS ORGANIZATION WAS CREATED?

A. I DO BELIEVE THAT THERE WAS COMMUNICATION WITH THE JUSTICE DEPARTMENT, BECAUSE THERE WAS FEAR OF THEM BEING PERCEIVED AS A CONSPIRACY IN RESTRAINT OF TRADE, BECAUSE GENERALLY IT'S NOT CONSIDERED APPROPRIATE FOR COMPETITORS TO MEET AND TO ENGAGE IN CONCERTED ACTIONS.

Q. BECAUSE THERE ARE LAWS CALLED ANTITRUST LAWS THAT REQUIRE BUSINESSES NOT TO GET TOGETHER?

A. THAT'S RIGHT. IT'S DEEMED SOMETHING LIKE A MONOPOLISTIC PRACTICE; THAT IS, THEY ARE SUPPOSED TO REMAIN SEPARATE AND APART AS COMPETITORS, YES.

Q. SO THE COMPANY THAT FORMED THIS ORGANIZATION (INDICATING) INFORMED THE JUSTICE DEPARTMENT WHAT THEY WERE DOING IS PUTTING TOGETHER A PUBLIC RELATIONS AND RESEARCH ORGANIZATION TO LOOK AT THE ISSUE OF SMOKING AND HEALTH; ISN'T THAT RIGHT?

A. I CAN'T VOUCH FOR THAT, BECAUSE I HAVE NEVER SEEN THAT CORRESPONDENCE, AND I DON'T KNOW THE EXTENT TO WHICH IT FAIRLY DISCLOSED THE EXTENT TO WHICH THIS WAS GOING TO BE A PUBLIC RELATIONS EXERCISE.

Q. AM I CORRECT THAT THIS ORGANIZATION (INDICATING)

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WAS FORMED VERY EARLY IN 1954, IN LATE 53?

A. THE FIRST MEETINGS WERE IN LATE 53. THE FIRST OFFICIAL ANNOUNCEMENT TO THE PUBLIC WAS IN EARLY '54.

Q. AND THAT FOLLOWED VERY CLOSELY ON THE PUBLICATION OF THE EXPERIMENT INVOLVING MICE AND PAINTING TOBACCO TAR ON THEIR BACKS?

A. YES, IT DID.

Q. WHICH WAS PUBLISHED SOMETIME IN THE SUMMER OF '53?

A. YES.

Q. THE FALL OF '53?

A. I DON'T REMEMBER THE EXACT DATE. BUT YES, IT WAS IN REACTION TO THAT.

Q. AND THE FORMATION OF THE ORGANIZATION WAS ANNOUNCED IN THAT FULL PAGE ADVERTISEMENT THAT YOU HAVE SHOWN US EARLIER CALLED "THE FRANK STATEMENT"?

A. YES.

Q. AND THAT RAN ON ONE DAY, DIDN'T IT?

A. YES, IN 448 NEWSPAPERS.

Q. AND AT THE TIME THIS ALL CAME ABOUT, THERE WERE OTHER ORGANIZATIONS OR SCIENTISTS UNCONNECTED TO THE TOBACCO INDUSTRY WHO HAD DOUBTS ABOUT THE SIGNIFICANCE OF THESE MOUSE STUDIES OR THE EPIDEMIOLOGY STUDIES THAT HAD BEEN PUBLISHED; ISN'T THAT RIGHT?

A. A FEW, BUT SURPRISINGLY FEW.

Q. WELL, ONE OF THE FEW INCLUDED THE DIRECTOR OF STATISTICAL RESEARCH AT THE AMERICAN CANCER SOCIETY; ISN'T THAT RIGHT?

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A. I DON'T KNOW. MY COMMENT ABOUT THE FEWNESS IS BASED UPON MY ANALYSIS OF THOSE PEOPLE QUOTED IN THE SCIENTIFIC PERSPECTIVE DOCUMENT.

Q. WE'LL TALK ABOUT THAT AFTER THE BREAK. BUT YOU KNOW WHO CUYLER HAMMOND WAS, DON'T YOU?

A. YES.

Q. HE WAS IN 1954 THE DIRECTOR OF STATISTICAL RESEARCH AT THE AMERICAN CANCER SOCIETY; RIGHT?

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A. I DON'T REMEMBER THE TIMING OF HIS POSITIONS, BUT HE WAS ONE OF THE PEOPLE ACTIVE IN THIS ISSUE.
Q. AND ARE YOU FAMILIAR WITH THE MAGAZINE U.S. NEWS AND WORLD REPORT?
A. YES.
Q. THAT'S A MAGAZINE THAT'S PUBLISHED TODAY, ISN'T IT?
A. YES.
Q. IT WAS PUBLISHED BACK IN THE '50S?
A. YES.
Q. AND IT WAS SOMETHING THAT COULD CONTRIBUTE TO THIS INFORMATION ENVIRONMENT WE'VE TALKED ABOUT BEFORE?
A. THE INFORMATION ENVIRONMENT, PARTICULARLY BUSINESSMEN IN THE EASTERN CORRIDOR, THE BOSTON, NEW YORK, WASHINGTON AXIS, THAT'S WHERE ITS PRIMARY CIRCULATION WAS. MY UNDERSTANDING, IT WAS A MAGAZINE NOT UNLIKE TIME MAGAZINE BUT READ BY THE BUSINESS ELITE, FOR THE MOST PART.
Q. SO ANY BUSINESS PEOPLE INVOLVED IN THIS ORGANIZATION WOULD HAVE BEEN THE KINDS OF PEOPLE LIKELY TO READ THAT MAGAZINE AT THAT POINT IN TIME?

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A. THEY WOULD HAVE BEEN MORE LIKELY TO BE SUBSCRIBERS THAN THE AVERAGE CITIZEN.
MR. OHLEMEYER: OKAY. LET ME MARK FOR IDENTIFICATION DEFENDANT'S 2574.
(DOCUMENT MORE PARTICULARLY DESCRIBED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANT'S EXHIBIT # 2574)
MR. OHLEMEYER: Q. LET ME HAND YOU, DR. POLLAY, A COPY OF DEFENDANT'S EXHIBIT 2574. CAN YOU IDENTIFY THAT FOR US?
A. (EXAMINING) IT'S GOT INDICATIONS ON IT THAT IT'S FROM THE FEBRUARY 26, 1954 ISSUE OF U.S. NEWS AND WORLD REPORT, PAGE 62 AND FOLLOWING THROUGH 71.
Q. AND IT DESCRIBES -- STRIKE THAT. DOES IT DESCRI THAT WENT INTO RETAIL DISPLAYS. IT'S THE MOST VISIBLE PACKAGE TO BE SEEN. AND THEY RELIED UPON THAT PRIMARILY IN TRADE ADVERTISING, SELLING HERSHEY PRODUCTS TO THE RETAILERS AND TO OTHERS.
IT'S BEEN THEIR PRIMARY STRATEGY FOR A LONG TIME, AND ONLY MORE RECENTLY HAVE THEY BEEN ENGAGED IN CONSUMER-LEVEL ADVERTISING, BUT THEY HAVE HAD A PROMOTIONAL BUDGET ALWAYS.
Q. THERE IS A DIFFERENCE BETWEEN PROMOTION AND ADVERTISING, ISN'T THERE?
A. WELL, WE TYPICALLY USE THE TERM ADVERTISING TO REFER TO THAT WHICH WE EXPERIENCE AS CONSUMERS IN PAID MEDIA. THERE'S ALSO TRADE-LEVEL ADVERTISING, WHERE MANUFACTURERS ARE ADVERTISING TO RETAILERS OR TO OTHER INTERMEDIARIES. THERE IS ALSO PROMOTIONAL EXPENSES WHERE MANUFACTURERS MAY PAY A RETAILER TO HAVE RETAIN SIGNAGE OR DISPLAYS TO GIVE FAVORABLE LOCATION PREFERENCES TO MANUFACTURERS, TO RUN CONTESTS.
SOME HAVE SPONSORSHIPS WHO PAY FOR EXPENSES,

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INCLUDING BASEBALL CAPS, T-SHIRTS AND PACKAGING, TO DO SPECIAL PACKAGING AND SO ON. THERE ARE QUITE AN ENORMOUS VARIETY OF PROMOTIONAL TOOLS AVAILABLE.
Q. ADVISING IS NOT THE SOLE DETERMINANT, THE SOLE THING THAT DETERMINES A CONSUMER'S BEHAVIOR, IS IT?

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A. NO. ADVERTISING PLAYS ON CONSUMER NEEDS, CONSUMER INTERESTS.
Q. THERE IS NO WAY TO SAY, BASED ON YOUR VIEW OF ADVERTISEMENTS, WHETHER ANY PARTICULAR INDIVIDUAL SAW ANY PARTICULAR AD THAT MIGHT HAVE BEEN PUBLISHED OVER THE YEARS, IS THERE?
A. WE CAN'T NECESSARILY BE CERTAIN ABOUT A CERTAIN AD, BUT CAMPAIGNS WERE DEPLOYED WITH SUCH INTENSITY THAT WE CAN SAY SOMEONE GROWING UP IN THE '50S WOULD HAVE SEEN NEWSCASTERS LIKE JOHN CAMERON SWAYZE AND MIKE WALLACE SMOKING ON CAMERA, APPEARING IN TESTIMONIALS AND ADS, OR WOULD HAVE SEEN THEM AT LEAST GIVING TESTIMONIALS IN ADS, WOULD HAVE SEEN CELEBRITIES OF STAGE AND SCREEN SMOKING ON SCREEN AND TESTIFYING IN ADS, WOULD HAVE SEEN EVEN DOCTORS, LAWYERS AND PROFESSORS SMOKING AND APPEARING IN ADS.
SO WE CAN WE CAN SAY WITH CONFIDENCE THAT THE DOMAIN OF ADVERTISING THAT PEOPLE WERE EXPERIENCING INCLUDED THESE THINGS. WE CAN'T BE CERTAIN THAT THIS PARTICULAR VERSION OF THE "MORE DOCTORS SMOKE CAMELS THAN ANY OTHER CIGARETTE" WAS SEEN BY THIS PARTICULAR PERSON. WE JUST KNOW THAT CAMPAIGN RAN FOR MANY, MANY YEARS.
Q. EVEN PEOPLE WHO SEE ADS AND MIGHT BE INFLUENCED BY AN AD, AS YOU'VE DESCRIBED, IT ISN'T NECESSARILY BY THE

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PRODUCT BEING ADVERTISED; RIGHT?
A. THAT'S CORRECT. YOU CAN HAVE YOUR ATTITUDES AND OPINIONS CHANGED WITHOUT LEADING TO THE RESULT THAT YOU BUY THE PRODUCT.
Q. AND PEOPLE ONLY TRY A SMALL PERCENTAGE OF THE PRODUCTS THEY SEE ADVERTISED?
A. THAT'S CORRECT.
Q. AND ADVERTISING CAN'T MAKE A PERSON CONTINUE TO USE A PRODUCT HE OR SHE DOESN'T LIKE, CAN IT?
A. AGAIN, IT DEPENDS UPON THE STRENGTH OF THE "DOESN'T LIKE." IT CAN CHANGE THE LIKELIHOOD OF THEIR ABILITY TO QUIT OR THEIR PROBABILITIES OF THEIR ATTEMPTING TO QUIT.
MR. OHLEMEYER: THAT'S ALL I HAVE, YOUR HONOR. THANK YOU, DOCTOR.
THE COURT: ANYTHING FURTHER?
MS. CHABER: YES.

REDIRECT EXAMINATION

BY MS. CHABER: Q. MR. OHLEMEYER WAS ASKING YOU ABOUT ADVERTISING FAILURES. HE GAVE YOU A FEW EXAMPLES?
A. YES.
Q. THE MARLBORO MAN WAS NOT AN ADVERTISING FAILURE, WAS IT?
A. IT IS JUST THE OPPOSITE. IT'S ONE OF THE MOST SUCCESSFUL CAMPAIGNS IN THE HISTORY OF AMERICAN ADVERTISING.
Q. WAS IT A CAMPAIGN THAT WAS PARTICULARLY SUCCESSFUL WITH CHILDREN?

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A. THAT'S WHERE ALL OF ITS SUCCESS REALLY -- IN THE LONG RUN, THAT'S WHERE IT RESTED. THEIR ABILITY TO RECRUIT STARTERS HAS LED TO A GROWING CLIENTELE.
Q. ARE YOU AWARE OF ANY COMPANY USING A CARTOON CHARACTER TO ADVERTISE A PRODUCT THAT CAUSES CANCER?
A. ONLY THE CAMEL COMPANY. I MEAN RECENT. I MEAN, IN RECENT YEARS.
Q. NOW, YOU WERE ASKED ABOUT THE JOURNAL OF THE

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AMERICAN MEDICAL ASSOCIATION?
A. YES.
Q. AND THAT'S THE JOURNAL PUBLISHED BY THE AMA?
A. YES, IT IS.
Q. AND YOU MENTIONED SOMEBODY NAMED MORRIS FISHBEIN?
A. YES, I DID.
Q. WHO IS THAT?
A. HE FOR A LONG TIME WAS THE EDITOR I THINK AND MAYBE IN CHARGE OF OTHER PUBLICATIONS AS WELL AS THE JAMA, BUT HE HAD RESPONSIBILITY FOR THE POLICIES OF THE JOURNAL OF THE AMERICAN MARKETING ASSOCIATION. HE WAS EMPLOYED IN THE CHICAGO OFFICES OF -- IT SHOULD BE THE AMERICAN MEDICAL ASSOCIATION. HE WAS EMPLOYED IN THE CENTRAL OFFICES OF THE AMERICAN MEDICAL ASSOCIATION.
Q. WAS MORRIS FISHBEIN RECEIVING YEARLY PAYMENTS BY A TOBACCO COMPANY?
A. YES, HE WAS.
Q. AND THAT EXTENDED THROUGH THE TIME PERIOD WHEN HE WAS THE EDITOR OF THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION?

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A. YES. THAT'S MY UNDERSTANDING.
Q. AND IF THERE IS AN AD IN THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, THE ORDINARY CONSUMER IS NOT GOING TO SEE THAT; CORRECT?
A. THAT'S CORRECT.
Q. THE ORDINARY CONSUMER'S DOCTOR MIGHT SEE THAT?
A. YES.
Q. AND IF THE AD APPEARS IN A MEDICAL JOURNAL, WHAT EFFECT MIGHT THAT HAVE ULTIMATELY ON THE CONSUMER?
A. IT WOULD LIKELY CHANGE THE ATTITUDES OF THE DOCTORS TO BE MORE FAVORABLY DISPOSED TOWARD SMOKING IN GENERAL AND THOSE BRANDS WHICH HE SAW ADVERTISED THERE IN SPECIFIC, INCREASING THE LIKELIHOOD THAT THE DOCTOR MIGHT BE TOLERANT OF SMOKING AMONG HIS PATIENTS OR EVEN RECOMMENDING CERTAIN BRANDS TO HIS PATIENTS.
Q. AND IN FACT, SOME OF THE TOBACCO COMPANIES DID SEND SAMPLE CARTONS OF CIGARETTES TO DOCTORS FOR THEM TO PASS ON OR RECOMMEND TO THEIR PATIENTS, DIDN'T THEY?
A. YES. THEY WOULD PROVIDE THOSE AS WELL AT CONVENTIONS IN WHICH THEY HAD FACE-TO-FACE MEETINGS WITH THE DOCTORS.
Q. AND MORRIS FISHBEIN WAS ONE OF THOSE PEOPLE WHO DID THAT, RECEIVED CIGARETTES FROM THE TOBACCO COMPANIES AND PASSED THEM ON?
MR. OHLEMEYER: YOUR HONOR, THE QUESTION IS LEADING.
THE COURT: SUSTAINED.
MR. OHLEMEYER: IT'S VAGUE AS TO TIME.

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THE COURT: SUSTAINED.
MS. CHABER: Q. IN THE TIME PERIOD WHEN MORRIS FISHBEIN WAS THE EDITOR OF THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, DID DR. FISHBEIN RECEIVE CIGARETTES FROM ANY CIGARETTE COMPANIES?
MR. OHLEMEYER: SAME OBJECTION, YOUR HONOR. WE HAVEN'T ESTABLISHED WHEN HE WAS THE EDITOR.
THE COURT: DO YOU WANT TO ASK THAT? WHY DON'T YOU ASK THAT FIRST AND SEE IF HE KNOWS.
MS. CHABER: Q. DO YOU KNOW WHEN HE WAS THE EDITOR OF THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION?

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A. I CAN'T BE ABSOLUTELY CERTAIN OF THE PRECISE DATES HE STARTED AND STOPPED, BUT I BELIEVE HE WAS THE EDITOR FROM THE LATE '30S UNTIL THE EARLY '50S.

Q. AND YOU HAD MENTIONED AT SOME POINT IN TIME WHEN THE TV COMMERCIALS OF CIGARETTES WERE STILL BEING PLAYED, THAT THE FEDERAL TRADE COMMISSION REQUESTED FAIR TIME FOR ANTI-SMOKING MESSAGES?

A. IT WASN'T THE FEDERAL TRADE COMMISSION. IT WAS THE FEDERAL COMMUNICATION COMMISSION, THE FCC. THEY APPLIED WHAT'S KNOWN AS THE FAIRNESS DOCTRINE. THE FAIRNESS DOCTRINE IS THE PRINCIPLE THAT IF ONE POLITICAL PARTY GETS SOME TIME ON A NETWORK, THAT THE OTHER POLITICAL PARTY IN FAIRNESS SHOULD GET EQUIVALENT TIME.

WHEN APPLIED IN THE CIGARETTE CASE, THE IDEA WAS THAT GIVEN ALL OF THE CIGARETTE ADVERTISING THAT WAS APPEARING ON TELEVISION, LITERALLY HUNDREDS OF ADS A MONTH THAT PEOPLE WERE SEEING, THAT THERE SHOULD BE SOME PROVISION

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FOR THE CANCER SOCIETY OR THE HEART ASSOCIATION OR SIMILAR PUBLIC HEALTH GROUPS TO ALSO HAVE SOME ACCESS TO TELEVISION TIME.

AND THAT WAS MANDATED. THE FCC AGREED WITH THAT PETITION AND REQUIRED THAT THE NETWORKS AND MAJOR STATIONS -- AND IT WASN'T AN EQUAL TIME PROVISION. IT GENERALLY PLAYED OUT AT PROVIDING SOME TIME, AND OFTEN THE TIME WAS LATE AT NIGHT AND SO ON.

SO THE PUBLIC HEALTH COMMUNITY REALIZED ABOUT ONE-SEVENTEENTH OF THE SIZE OF THE AUDIENCE THAT THE ADVERTISING FOR CIGARETTES WAS REACHING. BUT NONETHELESS, THERE WERE PUBLIC SERVICE ANNOUNCEMENTS ON TELEVISION CALLING PEOPLE'S ATTENTION TO THE HEALTH CONCERNS.

Q. AND HOW LONG A TIME PERIOD DID THAT LAST, THAT IN FAIRNESS TO THE CONSUMER THAT THERE BE TIME FOR PUBLIC SERVICE MESSAGES ABOUT THE HAZARDS OF SMOKING?

MR. OHLEMEYER: OBJECTION. ARGUMENTATIVE.

THE COURT: SUSTAINED.

MS. CHABER: Q. HOW LONG DID THAT LAST, THAT THERE REMAINED TV ADVERTISING AND FAIR TIME FOR PUBLIC HEALTH?

A. I THINK THREE, AT THE MOST FOUR YEARS, ABOUT 1968, '69, 1970. BY THE EARLY '70S, THE INDUSTRY HAD VOLUNTEERED TO GET OFF RADIO AND TELEVISION AND ESCAPE THIS.

Q. THEY WEREN'T FORCED TO DO THAT, WERE THEY?

MR. OHLEMEYER: OBJECTION, YOUR HONOR. MOVE TO STRIKE THE EDITORIAL COMMENT.

THE COURT: IT WASN'T CALLED FOR BY THE

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QUESTION. I WILL STRIKE IT AS GOING BEYOND THE QUESTION.

MS. CHABER: Q. THE CIGARETTE COMPANIES WERE NOT REQUIRED TO TAKE THEIR ADVERTISING OFF TV, WERE THEY?

MR. OHLEMEYER: OBJECTION. LEADING.

THE COURT: SUSTAINED.

MS. CHABER: Q. WAS THERE ANY KIND OF REQUIREMENT THAT YOU WERE AWARE OF WITH RESPECT TO TV ADVERTISING AND CIGARETTES SUBSEQUENT TO THIS APPLICATION OF THE FAIRNESS DOCTRINE?

A. NO, THERE WAS NOT. THERE WAS NO WARNING REQUIREMENTS. THERE WAS NO PROHIBITION AGAINST ADVERTISING ON RADIO AND TELEVISION. THAT WAS PERFECTLY LEGITIMATE AND REMAINED SO INTO THE 1970'S, WHEN LEGISLATION WAS FINALLY PASSED AFTER THE INDUSTRY HAD VOLUNTARILY LEFT.

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Q. AND YOU WERE ASKED SOME QUESTIONS ABOUT -- WE TALKED ABOUT IT SOMEWHAT ON DIRECT EXAMINATION. MR. OHLEMEYER ASKED YOU SOME QUESTIONS ABOUT THE THINGS THAT WENT INTO THE COMMUNICATIONS ENVIRONMENT, THE INFORMATION ENVIRONMENT. WAS ONE OF THE THINGS THAT WENT INTO THAT ENVIRONMENT PRESS RELEASES?

A. YES, AS THE PRESS RELEASES WOULD GET INCORPORATED INTO THE NEWS COVERAGE.

Q. AND DID THE TOBACCO INDUSTRY RESEARCH COMMITTEE AND SUBSEQUENTLY THE TOBACCO INSTITUTE ISSUE PRESS RELEASES?

A. YES, MANY.

MS. CHABER: EXHIBIT 13.

Q. I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS PLAINTIFF'S EXHIBIT 13 AND WOULD ASK YOU TO LOOK THROUGH

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THERE FROM EXHIBITS 13-1 THROUGH 45.

A. (EXAMINING) YES, I'VE DONE SO.

Q. AND LET'S GO DOWN THEM ONE BY ONE.

THE COURT: WELL, IF YOU ARE GOING TO DO THAT, WE'RE GOING TO QUIT FOR THE DAY.

MS. CHABER: JUST WITH ONE QUESTION, BECAUSE I WANT TO MOVE THEM INTO EVIDENCE, YOUR HONOR, AND A COUPLE OF THEM DON'T FALL INTO THE AGREEMENT. SO I CAN DO ALL THE NUMBERS.

THE COURT: WE'RE GOING TO NEED TO STOP WITH DR. POLLAY AT 5:05, WITH BOTH OF YOU HAVING A FULL CHANCE TO EXAMINE HIM, OR HE'S GOING TO COME BACK TOMORROW. I WILL GIVE YOU UNTIL FIVE TO 5:00.

MS. CHABER: I THOUGHT WE HAD A DIFFERENT UNDERSTANDING ABOUT DIRECT, CROSS AND REDIRECT.

THE COURT: I'M NOT FAMILIAR WITH ANY UNDERSTANDING THAT HAS NOT BEEN HONORED. SO YOU GO AHEAD.

MS. CHABER: OKAY.

Q. EXHIBITS 13-1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 29 AND 43.

A. YES, I'VE LOOKED AT ALL OF THOSE.

Q. ARE THOSE ALL PRESS RELEASES OF THE TOBACCO INSTITUTE?

A. THEY ARE, THE FIRST DATING FROM 1958, THE LAST 1983.

MS. CHABER: I WOULD MOVE THESE INTO EVIDENCE, YOUR HONOR.

THE COURT: ANY OBJECTION?

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MR. OHLEMEYER: NO, YOUR HONOR.

THE COURT: ALL RIGHT. LET ME JUST BE CLEAR. WHAT IS BEING RECEIVED IS 13-1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 29 AND 43; IS THAT CORRECT? DO I HAVE THAT RIGHT?

MS. CHABER: YES.

THE COURT: THERE IS NO OBJECTION?

MR. OHLEMEYER: THERE IS TO 43, YOUR HONOR.

THE COURT: 43.

MR. OHLEMEYER: WELL, ACTUALLY, NO, THERE IS NOT.

THE COURT: NO, THERE IS NOT?

MR. OHLEMEYER: NO.

THE COURT: THEN THEY ARE ALL RECEIVED.

(DOCUMENTS MORE PARTICULARLY DESCRIBED IN THE INDEX RECEIVED IN EVIDENCE AS PLAINTIFF'S

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EXHIBIT #S 13-1, 13-2, 13-4 THROUGH
13-18, 13-29 AND 13-43)

MS. CHABER: Q. AND WITHOUT TAKING THE TIME TO GO THROUGH EACH ONE, CAN YOU TELL US WHAT THE NATURE OF THESE PRESS RELEASES ARE?

A. THESE ARE RELEASES FROM THE HILL AND KNOWLTON FIRM INITIALLY AND THEN LATER FROM THE TOBACCO INSTITUTE TO THE PRESS TO PROVIDE QUOTES AND STIMULUS FOR NEWSPAPER COVERAGE OR OTHER COVERAGE, PRESS COVERAGE GENERALLY.

Q. DO ANY OF THESE PRESS RELEASES DISCUSS CIGARETTE SMOKING AS A CAUSE OF LUNG CANCER OR OTHER SERIOUS DISEASE?

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A. NOT TO MY KNOWLEDGE.

Q. AND DO ANY OF THESE DISPUTE A CONNECTION BETWEEN CIGARETTE SMOKING AND LUNG CANCER OR SERIOUS DISEASE?

A. YES, THEY DO.

Q. AND WHAT EFFECT WOULD THAT HAVE ON THE ORDINARY CONSUMER TO HAVE THESE PRESS RELEASES?

A. TO KEEP ALIVE THE NOTION OF CONTROVERSY AND UNCERTAINTY ABOUT WHETHER OR NOT CIGARETTES DID INDEED CAUSE CANCER.

MS. CHABER: I HAVE NO FURTHER QUESTIONS.

THE COURT: OKAY. ANYTHING FURTHER FOR THE DOCTOR?

MR. OHLEMEYER: I JUST HAVE THREE, YOUR HONOR.

THE COURT: OKAY.

MR. OHLEMEYER: I'LL BE BRIEF.

RECROSS-EXAMINATION

BY MR. OHLEMEYER: Q. DR. POLLAY, THERE'S NOTHING WRONG WITH EXPRESSING YOUR OPINION IN THIS COUNTRY, EVEN IF IT'S AN OPINION PEOPLE DISAGREE WITH, IS THERE?

A. EXPRESSING AN OPINION?

Q. YES.

A. NO.

Q. CAN YOU SHOW ME A SINGLE MISSTATEMENT OF FACT IN ANY OF THE EXHIBITS THAT MS. CHABER JUST PUT INTO EVIDENCE?

A. NO.

MR. OHLEMEYER: THAT'S ALL I HAVE, YOUR HONOR. THANK YOU.

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THE COURT: OKAY. ANYTHING FURTHER FOR DR. POLLAY?

MS. CHABER: NO.

MR. OHLEMEYER: NO, YOUR HONOR.

THE COURT: MAY HE BE EXCUSED?

MS. CHABER: YES.

MR. OHLEMEYER: YES, HE MAY.

THE COURT: OKAY. DR. POLLAY, YOU ARE EXCUSED.

(WITNESS EXCUSED)

THE COURT: OKAY. JURORS, LET ME ANSWER, FIRST OF ALL, THE QUESTION THAT I HAD. LET ME GIVE YOU A CHANCE, TATSUO, TO GET THOSE EXHIBITS.

THE CLERK: OKAY.

THE COURT: OKAY. THE QUESTION THAT WAS PUT TO ME WAS:

"JUST FOR CLARITY, DO WE GET A TRANSCRIPT OF TESTIMONY WHEN WE DELIBERATE? WHAT DO WE GET?"

LET ME REVIEW THAT WITH YOU. ON THE TRANSCRIPT OF THE TESTIMONY WHEN YOU DELIBERATE, THE ANSWER IS NO, YOU DO NOT GET A TRANSCRIPT OF THE TESTIMONY.

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IF DURING THE COURSE OF YOUR DELIBERATIONS YOU WANT TO REHEAR ANY OF THE TESTIMONY, THEN WHAT YOU ARE GOING TO NEED TO DO -- AND I'LL EXPLAIN TO YOU MORE ABOUT THIS LATER. OR EVEN IF I DON'T, LET ME COVER IT NOW. WHAT YOU ARE GOING TO NEED TO DO IS GIVE ME A NOTE FROM YOUR FOREPERSON DURING THE COURSE OF YOUR DELIBERATIONS SPECIFYING WHAT TESTIMONY IT IS THAT YOU WANT TO HEAR BACK.

AND THEN WHAT I WOULD DO IS HAVE JUDITH OSSA, OUR

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COURT REPORTER, COME IN THE JURY ROOM AND READ YOU BACK ANY TESTIMONY. BUT WE DO NOT PROVIDE TRANSCRIPTS FOR YOU IN THE JURY ROOM. IN FACT, USUALLY WE DON'T EVEN HAVE TRANSCRIPTS PREPARED BY THAT PARTICULAR TIME.

SO THE ANSWER IS NO, YOU DON'T GET A TRANSCRIPT. BUT IF YOU WANT TO HAVE A READBACK, WHAT YOU ARE GOING TO NEED TO DO IS SPECIFY WITH PARTICULARITY SO THAT WE CAN ALL IDENTIFY WHAT YOU WANT TO HEAR. AND THEN I WILL ASK JUDITH TO COME IN AND READ THAT TO YOU.

THE SECOND QUESTION THAT YOU HAVE IS WHAT DO YOU GET IN THE JURY ROOM. AND LET ME GO OVER THAT AGAIN. WE TOUCHED UPON THIS EARLIER, BUT IT'S A FAIR QUESTION. LET ME COVER IT AGAIN.

YOU OBVIOUSLY HAVE YOUR COLLECTIVE RECOLLECTION OF THE EVIDENCE, AND YOU HAVE YOUR COMMON SENSE AND GOOD JUDGMENT, WHICH IS PROBABLY NOT WHAT WAS INTENDED BY THE QUESTION, BUT THOSE ARE TWO THINGS THAT YOU HAVE.

WHAT YOU HAVE OF A PHYSICAL NATURE IS ANY NOTES THAT YOU TOOK HERE IN COURT DURING THE COURSE OF TRIAL YOU CAN TAKE INTO THE JURY ROOM WITH YOU DURING YOUR DELIBERATIONS. ANY EXHIBITS WHICH HAVE BEEN RECEIVED INTO EVIDENCE YOU WILL HAVE WITH YOU IN THE JURY ROOM DURING THE COURSE OF YOUR DELIBERATIONS. SO YOU'RE FREE TO READ ANY AND ALL OF THOSE EXHIBITS YOURSELF, IF YOU WISH, IN THE JURY ROOM.

AND I INDICATED TO YOU THAT I WILL MAKE AVAILABLE TO YOU IN THE JURY ROOM A WRITTEN COPY OF THE INSTRUCTIONS AS TO THE LAW THAT I WILL GIVE YOU AT THE END OF THIS CASE.

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I WILL READ YOU THOSE INSTRUCTIONS AT THE END OF THE CASE CONCERNING THE LAW THAT APPLIES, AND THEN I WILL MAKE A WRITTEN COPY OF THOSE JURY INSTRUCTIONS AVAILABLE TO YOU IN THE JURY ROOM. SO I THINK THAT THAT'S A SUMMARY OF WHAT YOU'LL HAVE WITH YOU.

TOMORROW'S SCHEDULE. I HAVE ANOTHER MATTER FOR HEARING AT THE END OF THE DAY. SO I'M GOING TO, UNLESS THAT CHANGES -- AND SOMETIMES THINGS DO CHANGE -- I'LL PROBABLY LET YOU GO AROUND 4:30.

SO BECAUSE OF THAT, THOUGH, I DO WANT TO START AT 9:00 O'CLOCK, SO WE CAN GET IN A DECENT DAY OF TESTIMONY. SO TOMORROW, I THINK WHAT WE CAN ANTICIPATE IS 9:00 O'CLOCK UNTIL 4:30. THAT'S MY BEST ESTIMATE TODAY.

REMEMBER OVER THE COURSE OF THE EVENING TO FOLLOW THE ADMONITION. IT'S ABSOLUTELY CRITICAL THAT YOU DO THAT. HAVE A GOOD EVENING. WE'LL SEE YOU AT 9:00 O'CLOCK SHARP TOMORROW.

(THE PROCEEDINGS ADJOURNED AT 4:58 P.M.)

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JUDITH ANN OSSA, CSR NO. 2310

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